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DEBATES AND PROCEEDINGS

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF CALIFORNIA,

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

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

OFFICIAL STENOGRAPHERS.

Volume III.

SACRAMENTO:

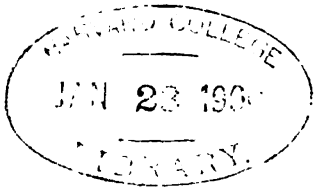
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could hold two hundred feet along the gulch. Then, when that was worked away these old forty-niners came along and said, you are gobbling up all the wealth of the country, and then they made a law that we could only hold one hundred feet. They wanted the thing divided up and cut down. There's where we learned the rule of division. There is where I got the spirit of dividing the land, and now we are going to apply it to these gentlemen who applied it to us. I don't ask to take a foot of land from Mr. Wilson, or anybody else. But when the gentleman from Alameda tells us there are yet forty million acres of land belonging to this State, we want to apply a limit to that to stop the land grabbers from gobbling it up. I don't blame my friend from Gilroy, Mr. Tully, for speaking in the interest of the land grabbers. I like to hear a man speak his sentiments fearlessly. I don't want to take anything from Lux & Miller, or from anybody else. But we want to fix some limit, so as to protect the remainder of the public domain from being stolen by the land grabbers. We want to fix some limit. It has been treated as a humbug. It has not been fairly considered by this Convention. We are not trying to take anything from any man who has come by it honestly. But we want to apply the limit to the lands which are still owned by the State, and prevent them from being gobbled up by the great corporations. I am here to go for what is right. I want to restrict corporations, and I will not here speak of the railroad company, but I will say that amidst all, the Central Pacific Railroad Company has done something for the country. They have opened up a market, they have helped to settle up the State. They have made it possible for the settler to get his grain to market. But I want some gentleman to tell me what in the name of the people of California any land grabber ever has done for the people. They are doing nothing. They are a fraud on the face of nature. If the railroad companies have taken our lands they have given us something in return, but the land grabber is a dead weight.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I would not detain the Convention if I had had a fair opportunity before to give my views on this question. I wish to speak on this amendment offered by Mr. McCallum, and I shall not detain you long. Now, if the gentlemen of this Convention knew the history I have gone through in my county for the last four years no such accession would be made. I have fought this question before I ever heard of the Workingmen's party. I have not fought it because I have any prejudice against land holders; not because I was a Workingman, but because I was laboring for the best interests of the State. We don't want the public domain for sheep and cattle alone, owned by men who live in New York or Washington, leaving their Superintendents in charge. We want the country settled up by men with families, who will live on their possessions, become a part of our community, and have an interest in common with ours. Every impartial man knows that California is far behind other States in this respect. Now, I was told by a President of a railroad company—the largest railroad company in the United States—a man who has had experience in many other States, and ought to know whereof he speaks, and he told me that a great deal of injury had been done to the prosperity of the State in this way. That the policy was detrimental to the capitalists, as well as to poor men. The gentleman from Santa Clara, whom I admire very much, says it is nothing but humbug; and he goes to the extent of saying that there is no such thing as land monopoly in this State. Is there no such thing as land monopoly in this State? Now, it seems to me, if we are sincere in this proposition, we cannot object to this amendment. It is the policy which has been pursued by this State heretofore. I have before me the law which limits the sale of school land to three hundred and twenty acres. It is the law and the policy of the Government of the United States to limit the amount of land which an individual may purchase. It is limited to actual settlers on the public domain. Why, you might as well say that a few men may own all the air, as to say that a few individuals can own all the soil upon which the people must rely for sustenance as much as they do on the air which they breathe. The large land holder can afford to make five per cent. on his money; whereas, if the land is divided up, it will yield twenty-four per cent. You might as well say that a man would have a right to enter and hold the Bay of San Francisco, where the commerce of the State is done; where the trade of the State centers. It has been argued here that a man has a right to buy all the stock there is on the market; and, to be consistent, he must be allowed to buy all the land he pleases. But there is a vast difference in the propositions. I do not advocate this in the interest of any party. I am not a candidate for office, else I would not stand here and advocate a proposition of this kind, for the capitalists and land holders control my county to a very great extent. They are a power in themselves. There is no man on this floor who has less desire for public notoriety than myself, if I do have to say it.

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I have been listening to this discussion for two days, and I am very sorry to see these large landed gentlemen from the interior falling into such a state of error in regard to our position. They seem to think that the people of San Francisco are determined to steal their land, and at the same time they talk about what good titles they have. We don't propose to take a single acre of land from any man in the State, not even from the clients of the gentleman from Santa Clara, who have one million seven hundred thousand acres of land in two of the largest counties of the State. We say, if they have got it, let them have it. But when gentlemen tell us there is no land monopoly in the State, that there is plenty of land to be had, they are mistaken. He is the only gentleman on this floor who asserts that there is no land monopoly in this State. I am very glad to find out from him that there is nothing to complain of. Now, the gentleman says: "Do you know of anybody who wants land?" I do. I know of several people who want land. I know very well that the tide of immigration has been cut off from California, because it is almost an impossibility to get land. I don't know that I am prepared to support the whole of the proposition offered by the gentleman from San Francisco, Mr. O'Sullivan; in fact, I have never advocated that measure. My plan is not to wrest from you your lands already acquired, but to put a stop to this wholesale grabbing; stop this grabbing large tracts of land, holding it out of the market. Let these gentlemen who hold these large tracts of land cultivate them, and pay their fair share of taxation, and we will not complain. But when we hear of men like Lux & Miller, owning six or seven hundred thousand acres of land out of market—holding it entirely for grazing purposes—and when their representative is so anxious to protect their interests, and tells us there is no land monopoly in this State, then we must beg to differ. I shall propose an entirely different plan, and I shall offer an amendment, when the time comes, that the Legislature shall provide by law for the breaking up of large tracts of land, of uncultivated land, by a graduated system of taxation. I maintain that the only way to reach this evil is by taxation. We don't propose to take land from any man who has a title, unless it has been acquired by doubtful means. We don't propose to confiscate any of your lands, or rob you, but we propose that you shall pay taxes on it. Therefore, I propose if a man has one thousand acres, to tax him by one system; if he has two thousand acres, to tax him by another; and three thousand at a still higher rate, and so on, until it will become very convenient for him to sell. That will take the land and place it within the reach of poor people, just as it was when these gentlemen found it here in eighteen hundred and forty-nine. Other people, who have come since eighteen hundred and forty-nine, should have something. It is no reason, because they came in eighteen hundred and forty-nine, that they should have the whole country. Now, we don't propose to disturb your titles. The Workingmen's party do not desire to take a single acre of your land. The gentleman from Tulare, Mr. Brown, says that sheep tramp the ground in his county; and yet he is not willling that the land should be cultivated. I would like to offer an additional amendment, if it is in order.

THE CHAIRMAN. Not in order at present.

MR. WELLIN. When an opportunity offers I will try to present it. It is simply for a graduated system of taxation.

MR. TULLY. I move the previous question.

[Not recognized.]

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: I had not intended to speak upon this very important question. I have listened with a great deal of interest to the arguments here, and I am very glad to find out that there are so many of the Workingmen who are anxious to take up land. I am very glad to know there is such affiliation between the Workingmen and the Grangers who belong to this Convention. I presume in consequence of that close conversation they had during the session, they have imbibed this feeling. I do not happen to be one of those men who own large tracts of land, though there is another gentleman of my name who owns a large lot of land. I have heard it reported that I was that very man. I am not. I have had a great many letters inquiring whether I was willing to dispose of my land. Having none, of course I made no reply. I have a little swamp land down here on the bay. If anybody can take it and pay me what it cost me, I will be glad to dispose of it. I never could get to it for the water, not having a right of way. As far as the land question is concerned, to use a favorite expression, I am willing to pool our lands, and have an equal divide all round. My friend Wilson, from Tehama, and my friend from Los Angeles, General Howard, both large landholders; and my friend Biggs, from Butte, another one; my friend from Marin, Judge Shafter, and various others, to them I say, let us pool our lands and have an equal divide. I would be willing to do that.

Now, sir, what is the fact? The public lands of the United States have been open to everybody. Anybody who saw fit could go and take them up. I have been asked time and again if I did not want to join parties and take up land in the San Joaquin and other valleys, and I declined to do it because I did not think it was profitable. I have no doubt there are many on this floor who didn't do it because they didn't think it would be profitable. It was a venture which they did not choose to make. I recollect the time when the Palo Alto Ranch, where Oakland now is, could have been bought for ten thousand dollars. Some gentlemen went to look at it, and came back and said they would not give ten thousand dollars for the whole country. They declined to take a ranch that is now worth millions. Who could foresee the future of California at that time? It is only when success becomes success that we slow-goers, who run behind the race, find out that we have lost the opportunity of making fortunes. That is the truth these people are now beginning to realize, because, as I said, these lands have been open to you all. The State lands and United States lands are open to you now. There is a large quantity of Government land accessible now to any one who wants to take it up. When we came here this was a country something like that which prevailed in the days of Abraham, where the Mexicans had large tracts of land which had been given to them because they had cattle. It was a grazing country. They had no market except for cattle. They owned large ranches, and herds of cattle and horses. The Americans came among them, like the wolf on the fold, and swept away their herds—took them without license and without consent. I know cases where they took possession of springs, and deprived them of the privilege of watering stock. They had large tracts of land simply for grazing purposes, and by these means they were really divested of their lands. In that way they were deprived of their possessions. That is the way these large tracts of land came into the possession of individuals, because it was necessary for their purposes; because they had no use for it for anything else. And I cannot see, after all I have heard, that anybody has been injured. Why, the largest

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land holder in this State is as much a workingman as any one in this Convention. He commenced as a hardworking laboring man. Lux & Miller commenced as humble butchers, working at their trade. I know another who commenced as a clerk, on a salary of one hundred dollars a month. These are the men you are hurling your anathemas against. Go and do as they have done. They built their fortunes by perseverance and industry. There are many who might be better off if they had saved their money instead of wasting it. Do as they have done. Be industrious and saving, and you will acquire a competence for yourselves and for your children, and then you will have less, perhaps, to complain of. Many of these rich men were in the same position you are.

MR. SMITH, of Fourth District. There is no proposition here to take a dollar away from these men.

MR. HAGER. No, sir; but you say these men have got too much. That is the complaint here. It is the people of the country who have made the laws, who administer the laws, and if there is any fault to-day it is because these lands have been acquired too easily from the Government. Now, if a man buys three hundred and twenty acres, can't he sell it to the man who wants to accumulate land? The same process of accumulation would still go on.

MR. TULLY. I want to ask a question. What right has a man to the exercise of superior sagacity in this country?

MR. HAGER. Do you mean political sagacity? I think this is owing to the Republican party. Under the old Democratic party we didn't have this monopoly. It was the policy of the Republican party which gave to these men the opportunity to gobble up lands.

SPEECH OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I don't intend to detain the committee but a few moments. I desire as far as possible to regulate this question of land monopoly, and to correct these abuses. I have supported propositions declaring that no corporation in this State shall hold land exceeding five years, except such as is absolutely necessary for their purpose. That is one of the greatest and most important measures passed in correcting the abuses of land monopoly. If the provision prevails (and I believe the Supreme Court will sustain it) it will do away with grants covering nearly one third of the State, and throw it open to the people, which it ought to do. I believe it is practical, I believe it is correct. But whether it is sustained or not, we have provided, in this Constitution, which I am satisfied a majority of this Convention will determine on, that no corporation shall hold land exceeding five years. That regulates the matter. That regulates it in the proper manner.

Another proposition we have made, is to compel the assessment of land by sections and fractions of sections. That will do more to regulate this land question than any of the propositions offered, though they are offered in good faith. I am aware he is in earnest in this matter. But this proposition will not accomplish as much as requiring the lands of this State to be assessed by sections. You have done that. You will stand by it when the final vote, when the ayes and noes come, and you will correct land monopoly, because each section will be assessed the same as cultivated land adjoining. When you come to assess these large tracts of lands at what they are really worth, then they will divide them up into small farms, and that will correct these abuses. We have provided still further, that this land shall be assessed, cultivated and uncultivated, alike. Now, in order that the abuses which have grown up in the assessment of land in this State shall not continue, that even the Assessor of each county may be under the control of the land owners no longer, we have provided a State Board that will place the land upon its cash value. That limits large tracts of land, because they could not make it profitable. In addition to the proposition offered by the author of the resolution, we have prohibited persons not citizens from owning land. That proposition I believe to be wrong. This Convention should determine that a person ineligible to become a citizen shall not have a right to own land. It will go into the Constitution that a man ineligible shall not own any land. We have invited men from Europe to come into our mines and settle, and help develop them; and to say to them, you shall not own any land, is wrong. We will take your land from you. That policy will never do, because they have an immense amount of money invested in the mines of this State, helping to develop these mines; encouraging immigration; encouraging capital to help develop the resources of the country. Accept this proposition to prohibit corporations from owning land over five years, this proposition to assess land according to its agricultural capacity, with the proposition that land shall be equalized by the State Board of Equalization, and the prohibition against persons incapable of becoming citizens of the United States from owning or renting lands, and you have done all that is in your power. You will have accomplished a revolution when the Constitution goes into effect, a greater revolution than ever was made in correcting abuses. We have accomplished all that the most sanguine men in this State could expect. I say, we have done all we should do in this matter. The proposition pending, of Mr. McCallum's, is not as complete as the present law. It is not from the law, it is from the mismanagement of it. The Surveyor-General's office of this State has been conniving at the sale of land contrary to law. With the exception of the present incumbent, there has not been one that has been sustained by law. The present law is correct; but the present proposition is this, to limit to three hundred and twenty acres of cultivated land in this State. It does not affect the amount of land a man may own to keep sheep on.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: It is not because I have any ill will towards this committee that I desire to occupy a moment or two of your time, but because I am profoundly impressed with the importance of this question. It is but a few words I can say within the limited time. But allow me to say to the gentleman from San Francisco who last addressed us, and to many other gentlemen, that it is no answer to the argument against land monopoly, that the time once was when the land could have been had for the taking. The facts are that it has been taken in large quantities, and held for speculation, and not for use. These are the facts, and are overwhelming reasons against the arguments advanced here on the other side. I want to call attention to some figures that were cited here this morning by the gentleman from Los Angeles. As they were read they convey a deceptive impression. The figures show the number and size of farms in California in eighteen hundred and sixty and eighteen hundred and seventy respectively:

	1860.	1870
Three acres and under ten	829	2,187
Ten acres and under twenty	1,102	1,086
Twenty acres and under fifty	2,344	3,064
Fifty acres and under one hundred	2,428	3,224
One hundred acres and under five hundred	6,541	12,248
Five hundred acres and under one thousand	538	1,202
One thousand acres and over	262	713

Now, in criticising these figures, we find, that of the farms of fifty acres and over, and less than one hundred and sixty acres, the number has has scarcely increased; that of farms of twenty acres and under fifty, the number was scarcely increased at all; and the number of small holdings—ten acres to twenty—was scarcely increased at all. The number of farms of three acres up to ten, was about doubled, while the number of one thousand acres and over, was more than trebled: hence it will appear, according to this table, that during these ten years, the number of large holdings were increased manifold more than the small farms. But the enlargement of the evil lies not in large farms, but in the ownership of large tracts of land which are not farms. Not in the putting of the land to use, but in holding these immense tracts of land for purposes of speculation, and putting the land to no use at all; there is where the evil lies. The land monopolists have made the assertion that a man has the right to buy all the land he can pay for. Let us see where that leads to. The logical result is, that a man, if he has the money, may buy the whole State of California, and give the nine hundred thousand people notice to quit, and declare that they must go, that they are trespassers. Is that public policy? What advocate of land monopoly will answer, aye? I pause to hear. That is the logical result, and there is no getting away from it. Has the State a right to prevent this? I answer, that it has just as much right as it has to guard against infected ships, or to impose taxes, or to do any other act of sovereignty. The State has a perfect right, and now the question is: Shall the State exercise this right? I wish I had time to rehearse a few facts in answer to some of the arguments here. Land monopoly is a question, the importance of which was early seen and recognized in this country. The question of a limited ownership of land is rapidly becoming one of national importance. When the public mind became once agitated on the subject of slavery, it culminated in civil war, and the conflict against land monopoly was, for the time, forgotten. The result of it was the amazing and almost incredible fact that, from eighteen hundred and sixty-two to eighteen hundred and seventy-two, Congress gave away to railroads, over one hundred and nineteen millions of acres of land. The Central Pacific, or rather, seven of the Directors, were endowed with one twelfth of this land. Add to this, that in eighteen hundred and seventy, nearly ten years ago, over seven hundred holdings in this State exceeding one thousand acres each, and see where you are——

[At this point the gavel fell.]

MR. STEDMAN. Mr. Chairman: This discussion has only led us to believe what was already believed before, that vast concentrations of land under one ownership are great evils; and we have also been led to believe what we believed before, that if these monopolists are not stopped they will seize upon every river and creek in the country. Now, sir, I believe we are all agreed upon this subject. I believe the discussion can do no more good, and I now move the previous question.

Seconded by Messrs. Biggs, Evey, McConnell, and Ayers.

THE CHAIRMAN. The question is: Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is upon the amendment of the gentleman from San Francisco, Mr. Dowling.

Lost.

THE CHAIRMAN. The question is upon the amendment offered by the gentleman from Alameda, Mr. McCallum.

Division being called for, the amendment was adopted, by a vote of 71 ayes to 26 noes.

MR. BEERSTECHER. Mr. Chairman: I wish to offer an additional section.

THE SECRETARY read:

"Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State."

Mr. BEERSTECHER. Mr. Chairman: I do not desire to speak upon the curse of land monopoly. It has been canvassed by others. But I call attention to section sixteen of the old Constitution, which provides that no perpetuity shall be allowed except for eleemosynary purposes. This is substantially the same thing. It prevents land being vested in a member of the family, or in a corporation for ever.

MR. MCCALLUM. That belongs under the head of Miscellaneous Subjects. It is already in that report.

MR. BEERSTECHER. I don't know anything about that report. It is better to put it here. It also guards against primogeniture. If this amendment is worth adopting, there is no better time and place than the present, under the head of land and homestead exemption. This provision is found in almost every Constitution in the United States.

MR. JONES. I apprehend, from the importance manifested, that it is the intention of the Convention to vote down the amendment.

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MR. ROLFE. I offer a substitute.

THE SECRETARY read:

"No perpetuities shall be allowed, except for eleemosynary purposes."

MR. ROLFE. Mr. Chairman: That is the language of the present Constitution. It is the provision which has stood for twenty-nine years, under which no perpetuity has ever occurred in this State. It includes everything that there is in the amendment of the gentleman from San Francisco, which is only redundancy.

THE PREVIOUS QUESTION.

MR. AYERS. Mr. Chairman: I move the previous question.

Seconded by Messrs. West, Howard of Los Angeles, Murphy, and Steele.

THE CHAIRMAN. The question is: Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is on the substitute of the gentleman from San Bernardino, Mr. Rolfe.

Division being called, the substitute was adopted by a vote of 73 ayes to 35 noes.

MR. WELLIN. Mr. Chairman: I offer an additional section.

THE SECRETARY read:

"The Legislature shall provide by law for the breaking up of large tracts of uncultivated lands by a gradual system of taxation."

MR. BARBOUR. Mr. Chairman: I offer a substitute.

THE SECRETARY read:

"The Legislature shall have power, and it is hereby made its duty to pass laws to prohibit and prevent the monopoly of land, by regulating the representation, use, and occupation thereof, by restricting the possession and tenure thereof, and to pass all necessary laws, not in conflict with the Constitution and laws of the United States, to prevent the accumulation of large landed estates in single hands."

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I offer this, sir, because it seems to me from the discussion here, that it ought to be free from objection, except the objections of those who are contending upon the floor of this Convention that there is no such thing as land monopoly in this State. To those nothing is acceptable. There is another class who believe that the thing is self-regulating. If they are satisfied that there is no such thing as land monopoly, they really ought not to object to a proposition of this kind. Now, sir, the assertion has been made upon this floor, that there is no such thing as land monopoly. Those of the Democratic party on this floor, who seem to take that view, I refer to the very last State platform of their party, and ask them what they meant when they came before the people of this State saying, that land monopoly is a curse, and ought to be abated? There must have been some reason for that platform. And the Republicans of this Convention stood upon about the same platform before the people of this State; and now gentlemen of this particular faith come upon this floor and tell us that it is all a myth. No sir, they say, there is no such thing as land monopoly in this State. Is it, sir, merely to play with the people that these platforms are made? Are they simply taffy to catch flies? I want to tell the Democratic members upon this floor, whose grand old party was organized in the United States on the principle of opposition to monopolies, that they will not be able to explain to the people how it was, after they have been talking so glibly about the reserved power of the State, the sovereign power of the State, that they can find no way to do anything about land monopoly. They can find law to regulate the Chinese; they can find power to put them in ships and send them away from this coast; they can curb corporations; but they cannot curb this great evil of land monopoly. Sir, it will never do. If there is one subject matter over which this State has complete control it is over this very matter. It is by the very power and protection of the State that these men own and hold their property. If a man has a cattle range extending over a thousand hills, how long would he be able to maintain possession of it against the tide of settlement, should the protection of the State be withdrawn? What mean the laws with respect to the subjects of ejectment, partition, adverse possession, and the whole list of laws regarding the acquisition, transfer, recording, and conveyance of land. It is the power of the State, sir, over the subject matter. Now, sir, my time is too short to discuss this whole question as I would like to do. I would like to reply to these gentlemen who have been for two days misrepresenting the position of my colleagues upon this subject. They have been for two days declaring that we were in favor of dividing up the property of this State. There never was a more infamous misrepresentation of our position. We do not want one foot, or one inch of it, and gentlemen know it. But we do want to have this matter under State control, so that this may be the land of the people, and not the land of the monopolist. We only want to harmonize the policy of the State with the policy of the United States. We only want to do what the government has done, make the people owners of the soil rather than tenants of great landlords. [Applause.]

MR. TULLY. I move that the committee now rise, and report that the report of the Committee on Land and Homestead Exemption be indefinitely postponed.

MR. SMITH, of Fourth District. I move an amendment, that the committee rise and ask leave to sit again.

MR. REYNOLDS. Is it competent for the committee to rise while an amendment is pending?

THE CHAIRMAN. The committee can rise at any time. The question is on the motion to rise.

Lost.

THE PREVIOUS QUESTION.

MR. FARRELL. Mr. Chairman: I move the previous question.

Seconded by Messrs. Beerstecher, White, Howard, of Los Angeles, and Lindow.

THE CHAIRMAN. The question is: Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is on the substitute offered by the gentleman from San Francisco, Mr. Barbour.

Division was called, and the substitute was lost, by a vote of 49 ayes to 53 noes.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Francisco, Mr. Wellin.

Lost.

MR. MCCALLUM. Mr. Chairman: I move that the committee rise and recommend that the amendments adopted by the Committee of the Whole be adopted by the Convention.

Division being called for, the motion prevailed, by a vote of 63 ayes to 45 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: I am instructed by the Committee of the Whole to report that they have had under consideration the report of the Committee on Land and Homestead Exemption, have adopted certain amendments thereto, and recommend the adoption of the report as amended.

ADJOURNMENT.

MR. CAPLES. I move we take a recess until seven o'clock.

MR. SHOEMAKER. I move we adjourn.

Carried.

And at five o'clock P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND TWENTIETH DAY.

SACRAMENTO, Saturday, January 25th, 1879.

The Convention met in regular session at ten o'clock A. M., President pro tem. Belcher in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Herold,	O'Sullivan,
Ayers,	Herrington,	Prouty,
Barry,	Hilborn,	Pulliam,
Barton,	Hitchcock,	Reddy,
Beerstecher,	Holmes,	Reed,
Belcher,	Howard, of Los Angeles,	Rhodes,
Bell,	Howard, of Mariposa,	Rolfe,
Biggs,	Huestis,	Shafter,
Blackmer,	Hughey,	Shoemaker,
Boggs,	Hunter,	Shurtleff,
Boucher,	Inman,	Smith, of Santa Clara,
Brown,	Jones,	Smith, of 4th District,
Burt,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Chapman,	Keyes,	Stedman,
Charles,	Kleine,	Steele,
Condon,	Lampson,	Stevenson,
Davis,	Larkin,	Stuart,
Dean,	Larue,	Sweasey,
Dowling,	Lavigne,	Swenson.
Doyle,	Lewis,	Swing,
Dudley, of Solano,	Lindow,	Terry,
Dunlap,	Mansfield,	Tinnin,
Estee,	Martin, of Santa Cruz,	Tully,
Evey,	McCallum,	Turner,
Farrell,	McConnell,	Vacquerel,
Filcher,	McCoy,	Van Voorhies,
Freeman,	McFarland,	Walker, of Marin,
Freud,	McNutt,	Walker, of Tuolumne,
Garvey,	Mills,	Waters,
Glascock,	Moffat,	Webster,
Gorman,	Moreland,	Weller,
Grace,	Morse,	Wellin,
Hager,	Murphy,	West,
Hale,	Nason,	Wickes,
Harrison,	Nelson,	White,
Harvey,	Neunaber,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Winans.

ABSENT.

Barbour,	Finney,	Porter,
Barnes,	Graves,	Reynolds,
Berry,	Gregg,	Ringgold,
Campbell,	Hall,	Schell,
Casserly,	Johnson,	Schomp,
Cowden,	Kenny,	Thompson,
Cross,	Laine,	Townsend,
Crouch,	Martin, of Alameda,	Tuttle,
Dudley, of San Joaquin,	McComas,	Van Dyke,
Eagon,	Miller,	Wilson, of 1st District,
Edgerton,	Noel,	Wyatt,
Estey,	O'Donnell,	Mr. President.
Fawcett,	Overton,	

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LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Schell.

Two days' leave of absence was granted Messrs. Laine and McComas.

Three days' leave of absence was granted Messrs. Johnson and Winans.

Indefinite leave of absence was granted Messrs. Graves and Overton.

THE JOURNAL.

MR. WYATT. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

MEMORIAL TO CONGRESS.

MR. AYERS presented the following resolution:

Resolved, That a special committee of three be appointed by the President to draw up a memorial to Congress, protesting against the further issuance of scrip which can be located on vacant Government lands, whether surveyed or unsurveyed.

MR. AYERS. Mr. President: I offer this resolution so that this Convention may be enabled to protest against the practice which has grown up in this Government of issuing preferred scrip on public lands, whether surveyed or unsurveyed. This practice has resulted not only in great injury to the honest settlers, but it has caused great wrongs in regard to titles that already seemed to have been settled. Take the Valentine scrip for instance. That scrip has been held by parties and laid in wait to find a flaw in some title to land located in one of the populous and wealthy centers, and whenever a flaw has been found, this scrip has pounced upon it and taken it. I find, Mr. President, a dispatch in one of our public papers relative to this matter, showing that we are about to have a new avalanche of this scrip, which will go in and precede the settler, take away the choice lands, and do great public injury:

"WASHINGTON, January 21.—The House Committee on Public Lands to-day agreed to recommend the passage of Luttrell's bill providing for the issuance of scrip to owners of the Oregon wagon road grant of July third, eighteen hundred and forty-four, for the number of acres equal to the quantity of lands within the limits of said grant, subsequently embraced in the Klamath Indian Reservation. The proposed scrip is to be locatable on any unoccupied and unappropriated public lands, not mineral, whether surveyed or unsurveyed. It could be used apparently just like the Valentine scrip, and the amount called for by the terms of the bill, though not stated, is understood to be very large."

Now, sir, I for one protest against this practice of issuing scrip which may disturb titles, and which may gobble up the land which settlers ought to have. It is a practice which is ruining the country, and I hope that the resolution may be adopted, and that a committee will be appointed to investigate this matter and send on a proper protest.

MR. WEST. I second the motion.

The resolution was adopted.

LAND AND HOMESTEAD EXEMPTION.

MR. BEERSTECHER. Mr. President: I move that nine hundred and sixty copies of the report of the Committee of the Whole upon the minority report of the Committee on Land and Homestead Exemption be printed as a supplement to the report already made.

MR. ESTEE. Was not the original minority report printed?

MR. BEERSTECHER. Yes.

MR. ESTEE. Well, then, I do not see why we should print a second edition of the minority report. This Convention has acted upon the report in Committee of the Whole. It will be printed and come on the file. Now, as I understand it, the original minority report was printed.

MR. BEERSTECHER. The motion is to print the report of the Committee of the Whole.

MR. HAGER. The motion is all right enough except the number of copies.

MR. O'SULLIVAN. I move that the number be four hundred and eighty—the usual number.

The motion prevailed.

REPORT.

MR. STEDMAN. Mr. President: I send up a report.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Labor and Capital have had under consideration Proposition No. 517—in relation to the hours of labor—and have directed me to report the same back to the Convention, with a recommendation that it be not adopted.

They have also had under consideration Propositions Nos. 74 and 476—in relation to a State Department of Labor and Labor Statistics—and being unable to agree upon the same, have directed me to report them back to the Convention without any recommendation.

All of which is respectfully submitted.

I. S. BELCHER, Chairman.

MR. BEERSTECHER. Mr. President: I move that the report be placed upon the general file for action by the Committee of the Whole.

THE PRESIDENT pro tem. It goes there without a motion.

CHANGE OF RULE.

MR. McCALLUM. Mr. President: I gave notice that I would to-day move to amend Rule Twenty-four by striking out the last proviso in that rule, which motion I now make. Rule Twenty-four, under the head of calling the ayes and noes, provides: "On all questions and motions whatsoever, the President shall take the sense of the Convention by ayes and noes; provided, five members present shall so require. When the ayes and noes are taken no member shall be allowed to vote who shall have entered the Convention after the calling of the roll is finished. The names of members shall be called in alphabetical order."

I do not propose by my motion to interfere with that rule at all. The last proviso and the one which I move to strike out is this: "Provided, further, that on all resolutions and propositions relating to the Constitution, the final vote shall be taken by ayes and noes."

Under this rule the ayes and noes would have to be taken on every motion which would come before the committee. It would make no difference how unanimously we might be agreed upon it; no matter though it was sections of the old Constitution, about which there is no question, the ayes and noes, under that proviso, would have to be taken upon every section. And in those cases where there are different questions involved, as is frequently the case, the ayes and noes would have to be taken upon the different propositions. We find that in our Constitution, as it is, there are one hundred and fifty-three sections. We have to pass upon each section, whether we amend it or not. We have to pass upon it as a part of the proposed new Constitution. I could not, if the time permitted me, say how many sections there would be in this new Constitution. It is safe to say it is double the number, which would be three hundred and six. Besides we have several articles in addition to what we had before. We have, in fact, thirty committees, and each committee reports something. I suppose that is upon the idea that if they did not report something it would be thought they had not done their duty: and that makes the instrument more voluminous than it would otherwise have been. Estimate only ten sections to a committee, and it would make three hundred sections. We have a report of the Committee on Corporations other than Municipal which contains some twenty-six sections, which is entirely different from the old Constitution, being in a separate article; another report on revenue, which is entirely a separate article; and in a number of articles which I have had an opportunity to examine I find that the sections are considerably increased. I understand that it takes twenty minutes to call the roll, or it will average twenty minutes. There would be three hundred roll calls; that is six thousand minutes; how many hours is that? One hundred hours. That would be twenty days at five hours each day. It would actually take twenty days time to call the roll, and do nothing else. Under the rule five members can call for the ayes and noes, and where there is no material difference of opinion it is not necessary to call the roll on every section. This is only to avoid the inflexible rule, that it must be called anyhow. I think it will be passed by a unanimous vote, if there is a correct understanding of it.

MR. WHITE. Would this disturb the right of five members to call for the ayes and noes?

MR. McCALLUM. No sir. Five members may call for the ayes and noes anyhow.

MR. BEERSTECHER. Mr. President: I believe, sir, that if that be stricken out, there will be no time gained at all, because there will be a sufficient number of members upon this floor who will be anxious to have the ayes and noes go upon record, and consequently the ayes and noes will be called by five members. The Chair will then be under the obligation of saying: Is the call for the ayes and noes supported? These members must then arise, their names must go upon record upon the Journal, and the very fact of obliging five members to call for the ayes and noes will consume as much time as the roll will, taken under the rule. I know that it has been the common practice with certain men upon this floor, after the Chair has decided that the vote was in their favor, to then jump up and ask for a division. I have known men to do it upon this floor more than fifty times. The same thing will happen in relation to a call for the ayes and noes, and the very fact of calling for the ayes and noes will use up more time than if we go on under the rule. I am opposed to the change.

MR. DOWLING. Mr. President: I am opposed to amending this rule as proposed by the gentleman from Alameda, but if we have one that no one can offer any more than one amendment to each section, I think it will facilitate business and meet with the approbation of the Convention.

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

Seconded by Messrs. White, Swing, Larue, and Martin of Santa Cruz.

The ayes and noes were demanded, on the adoption of the amendment, by Messrs. Farrell, Bell, Harrison, Nelson, and Smith of San Francisco.

The roll was called, and the amendment rejected by the following vote, not being two thirds in the affirmative:

AYES.

Andrews,	Howard, of Mariposa,	Nason,
Ayers,	Huestis,	Ohleyer,
Barton,	Hughey,	Prouty,
Belcher,	Hunter,	Pulliam,
Biggs,	Inman,	Reed,
Boucher,	Jones,	Rhodes,
Brown,	Kelley,	Shafter,
Caples,	Keyes,	Smith, of Santa Clara,
Charles,	Lampson,	Smith, of 4th District,
Davis,	Larkin,	Steele,
Dean,	Larue,	Stevenson,
Dudley, of Solano,	Mansfield,	Stuart,
Estee,	Martin, of Santa Cruz,	Sweasey,
Evey,	McCallum,	Tinnin,
Freeman,	McConnell,	Turner,
Garvey,	McCoy,	Walker, of Tuolumne,
Hager,	McFarland,	Waters,
Heiskell,	McNutt,	Webster,
Hitchcock,	Mills,	Weller,
Holmes,	Moreland,	Wilson, of Tehama,
Howard, of Los Angeles,	Morse,	Wyatt—63.

NOES.

Barry,	Condon,	Glascock,
Beerstecher,	Dowling,	Gorman,
Bell,	Doyle,	Harrison,
Blackmer,	Farrell,	Harvey,
Boggs,	Filcher,	Herold,
Burt,	Freud,	Herrington,

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Joyce,	Rolfe,	Terry,
Kleine,	Shurtleff,	Tully,
Lavigne,	Smith, of San Francisco.	Vacquerel,
Lewis,	Soule,	Van Voorhies,
Nelson,	Stedman,	Wellin,
Neunaber,	Swenson,	West,
O'Sullivan,	Swing,	White—39.

SCHEDULE.

MR. MORELAND. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President pro tem. in the chair, for the purpose of further considering the report of the Committee on Schedule.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the substitute for section ten, offered by Mr. Moreland.

THE SECRETARY read:

"Substitute for section ten: 'In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same, shall be respectively one year shorter than the terms as in this Constitution provided, and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I am opposed to the amendment offered by Mr. Moreland, and I am in favor of the report of the Committee on Schedule as the same stands in section ten. If the substitute of Mr. Moreland were adopted, the consequence of its adoption would be that we would have a general election in September of this year, and that we would have another general election for all State, county, and municipal officers next year. In other words, we would have two general elections within one year's time. And if the substitute of Mr. Moreland were adopted, with the Constitution as the same now stands, allowing two Boards of Supervisors in the City and County of San Francisco, or a legislative body with two departments in that city, one of these departments would only be in power and in operation about four months before they would be out of office under the provisions of the Moreland substitute. Now, every member upon this floor knows that if this Constitution that we are framing be adopted, in order to give the people of this State the benefit of its provisions, it will be necessary that legislation be had upon the subject. It will be necessary that force and efficacy be given to the several sections by legislative enactments. The Legislature cannot sit at all until next January, and the laws that that Legislature passes cannot go into force until some time in May, June, or July of next year, and yet the Moreland amendment proposes to wipe out all elected officers next year, virtually allowing them to act under the new Constitution only about six months. If we desire to adopt anything of this character it would be less expensive for us simply to say that there shall be no such election this Fall, but that every person occupying official position in this State shall continue in office until a year from now.

MR. MCFARLAND. Do you recollect whether or not we have established a day for the general election anywhere in this Constitution?

MR. WYATT. The day of the Presidential election.

MR. MCCALLUM. There is its effect. It is assumed by the Committee on Schedule that we did change the time to the even years. We have not done that. This report assumes that, but that is not correct. It has not been done by any article yet. We have not changed the year, but we have fixed the day in the year when the election will take place.

MR. BEERSTECHER. Mr. Chairman: Section ten, as reported by a majority of the committee, provides that those persons elected to positions under the new Constitution shall continue in office until the next Presidential election; that is, those who are elected for two years shall continue in office three years and those elected for four years will hold but three years. That will bring the next election succeeding the election which takes place this Fall with the Presidential election of eighteen hundred and eighty-four, and will make matters all right and smooth. There will be no trouble about it. The government, under the new constitutional machinery, will be established and in perfect working order. This other way, we put into office a set of men who will have barely been in office before they are to be out of office, or at least before it becomes necessary to have another general election. I cannot see the object in electing men for six months. I cannot see the object of obliging people to go to the polls twice within one year. I believe that the amendment offered by Mr. Moreland is undesirable, and that the report of the committee is a desirable report.

MR. WHITE. Under this report all members of the Assembly have to be elected——

MR. BEERSTECHER. I am speaking of the amendment as affecting the whole State, not particularly Assemblymen. I believe that the report of the committee is a good and proper one, and the one usually adopted in Constitutions.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: The elections in this State have heretofore been and are now in odd years. The plan of the Constitution that has been adopted so far, is to transfer the elections from the odd years to the even years, and it therefore becomes necessary to make some provision in this Constitution whereby these elections may be transferred from the odd to the even years. To do that it is necessary either to shorten or to lengthen the terms of the first officers elected under the Constitution. This section, which is reported in the schedule, says:

"SEC. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected under the same, and whose term of office is four years or over, shall be, respectively, one year shorter than the term provided for in this Constitution, and the term of all officers whose term of office is two years shall be, respectively, one year longer than the term provided for in this Constitution, except the members of the Assembly, whose first term of office shall be one year; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law."

MR. MCCALLUM. What provision do you refer to wherein we have agreed to have the election on the even years?

MR. MORELAND. I do not believe that we have established it in the Constitution itself, but it seems to be an understanding in the Convention.

MR. MCCALLUM. The discussion is going to be whether it shall be on even or odd years. There are two sides to that question. Read the section in the legislative article.

MR. MORELAND. I do not know that it is yet settled. It has not yet been settled in the Constitution that the election shall be transferred to the even years. But it has been my understanding all the time that they would be.

MR. STEDMAN. Does not the report transfer the elections to the even years after the first election just as well as the amendment? Both the report and the amendment transfer the election to the even years.

MR. MORELAND. Yes; I think it is generally understood. This section endeavors to conform to the Constitution, to that requirement. Of course, if the Constitution decides otherwise, there will be no necessity for this section; but I am arguing on that hypothesis. This section is defective in several respects. First, it says that the terms of all officers elected under the Constitution. It does not say whether they are the first officers elected or not.

MR. SWENSON. Are you not aware that that is a clerical error in the report? I have already introduced an amendment to rectify that.

MR. MORELAND. I did not draw up this section, and am not responsible for any of its defects. The section that I have introduced provides that the terms of all officers elected at the first election under the new Constitution shall be respectively one year shorter than the terms fixed in the Constitution. Now, Mr. Beerstecher seems to go upon the hypothesis that we are to have no election next year, but I would say that we are. The section excepts members of the Assembly, and says that their terms shall be but one year, consequently we will have to have an election next year for members of the Assembly. Under this section, as reported by the committee, the Senators elected for the short term would serve two terms in the Legislature, and those elected for the long term would serve three terms in the Legislature. I do not think the Convention want to provide that the Senators shall serve so many terms. The section I have introduced provides for cutting off the terms of all officers, without making any distinction, one year. That is, the Judges of the Supreme Court would serve nine years instead of ten. The State officers would serve three years instead of four, and county officers one year instead of two. The object is to bring the elections upon even years. I think the section I have introduced is more perfect than the other, and ought to be adopted.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I desire to present an amendment. I propose to strike out lines one and two, down to and including the word "same," in line three, and insert "the term of all officers elected at the first election under this Constitution." I will say, in connection with the amendment offered by Mr. Moreland, that I think the section as originally reported had better remain, so far as the substance is concerned. I am in favor of the report just as it stands, with the exception of the preamble, which I think is wholly unnecessary. There is no necessity of a preamble where it is unnecessary to carry out the objects and purposes of the section. I think the amendment as proposed by Mr. Moreland ought to be rejected, and that the report of the committee as it stands, so far as the substance is concerned, ought to be adopted.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. Chairman: As a member of the Committee on Schedule, I want to say that this same proposition was introduced in the Committee on Schedule. We disapproved of it, sir, for what we considered very good reasons. According to some of the work already performed by this Convention, County Boards of Supervisors will have more power than they ever had before, to legislate our county matters. Now, sir, this Constitution is undergoing serious changes, and being that these gentlemen would have more to take into consideration, in the few months that they would have to remain in office, than they ever had before, we thought that the best thing that could be done to give these gentlemen an opportunity of legislating for the best interests of their counties and constituents, would be to transfer the shorter terms for one year, and give a longer term one year, so that we would agree in bringing the elections on the even years. That would meet the Congressional matter in a better shape than what it is in at the present time. But, sir, to carry out the amendment as he has it now, men will just about begin to organize for the purpose of making local laws, when a new election is called. My friend, Mr. Moreland, went in considerable on economy, but if his amendment is adopted, it will cost the State fifteen hundred dollars for every election that is held, and that might go to pay the back pay of the members of this Convention. So much saved to the State. Sir, I hope, for the better interests of the State and the peo-

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ple at large, that the report from the committee will be adopted by the Convention.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I suppose we all understand what the object of this section is, and what the object of the amendment is. If the new Constitution should go into force, the elections would come on a different year from what they have been heretofore. Therefore, to inaugurate the new system it is necessary to change the terms; either to shorten them or lengthen them. The question is, whether we should shorten the terms, or lengthen the terms. Now, if there are any persons here who are ambitious or desirous of obtaining office under the Constitution, the policy would be to prolong the term one year; but if we are indisposed to accept office, I think the better plan would be to shorten the terms. But without regarding any person's ambition, what ought we to do? What would be the best policy in inaugurating the Constitution under the new system? As I understand the last amendment, it is intended to shorten a two years' term to one year, and a four years' term to three years, so that the officers elected at the first election for two years will hold for one year, and those elected for four years would hold three years. Now, next Fall we have an election; the Fall after that we will have another election, and the regular elections under the Constitution will come on the even years. The elections under the old Constitution come on the odd years. By the old Constitution we have an election next Fall, and by the new Constitution we have another the year after. We will have an election at the time of the Presidential election. I think myself that if this Constitution is adopted by the people, we ought to have a Legislature meet next Winter, and a Legislature meet the following Winter, in order to inaugurate the new system. We will then have two succeeding Legislatures, one following the other for two years, and then after that it will be biennial. As far as I have thought of the matter, it seems to me that in all probability in inaugurating the new system under the new Constitution it may be desirable to have a Legislature next Winter and a Legislature the following Winter, although I do not know that it is absolutely necessary; but perhaps, as we have to have an election, and have to inaugurate the Constitution, it may be well enough to have two Legislatures, one succeeding the other, as the years succeed each other, in order to better inaugurate the new system under the new Constitution. Those who are elected for a four years' term will hold three years, and those elected for a two years' term will hold one year. The other proposition is, that those who are elected for two years should hold for three years. I do not think that is desirable. I do not think that we ought to prolong a term. I am inclined to favor the amendment which is offered by the Chairman of the committee, to reduce the two years' term to one, and the four years' term to three.

MR. JOYCE. Did you not go in for long terms all through this Convention?

MR. HAGER. No; I am a short term man. I should vote for a short term. I am not in favor of a twelve-year term for Judges. I would prefer to have it six. I prefer always a short term, and if you get good men for the short term, it is easy enough to reëlect them. I am in favor always of short terms where they are elected by the people.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman, Gentlemen of the Committee: As I understand it, there is only one question involved in this amendment, and that question has been stated by the gentleman from San Francisco, Judge Hager. The question is, Shall we increase the term of the local officers to three years after the first election, or shall we fix it at one year after the first election under this new Constitution? It is a question of policy only. So far as I am concerned, I believe that it will redound to the best interest of the State, and it will have an effect upon the adoption of this Constitution, if it is thought worthy of adoption, which I believe it will be, to shorten the first term instead of lengthening it. I do not think that we ought to provide in this Constitution that the local officers of the City of San Francisco should hold for three years. The long terms have been tried, and it has been the universal opinion, so far as I have been able to observe, that in that city short terms for local officers is the true policy. As Judge Hager has well said, if a person proves by the exercise of his office, during a short term, that he is capable and honest, he will be reëlected. That has been the rule in San Francisco, regardless of party influence. I am in favor of short terms for local officers. My friends who are candidates for office may think otherwise. The idea of electing men for two years, and lengthening their terms to three years, I think will not meet with the approval of the people of that city. I hope that the amendment as proposed by the gentleman from Sonoma, Mr. Moreland, will be adopted for that reason. I think it will be a wise provision, and I indorse what Judge Hager said in regard to it.

REMARKS OF MR. WELLER.

MR. WELLER. Mr. Chairman: I look upon this section as one of the most vital that we shall adopt, from the very fact that the frequency of our elections have been a great burden. If we elect for three years, commencing at the present time, we will have another election in eighteen hundred and eighty-two—a gubernatorial election for the State. The Presidential election comes in eighteen hundred and eighty, and every two years we will have an important election—a gubernatorial once in four years and a Presidential election once in four years—and that will draw out the general vote of the State each election. I do not see the objection to having our officers remain in office under this Constitution, even if it is new, for three years. Those that hold office for four years would be elected again in eighteen hundred and eighty-two, and bring the elections on even years, and then alternately the gubernatorial election and the Presidential election. I favor this section that would elect the State officers for three years from eighteen hundred and seventy-nine, those who would hold office for four years, so as to bring the election again in eighteen hundred and eighty-two. Then the Presidential election would come in eighteen hundred and eighty-four, and the regular State election in eighteen hundred and eighty-six, and so on. I look upon this section as a very important one; one that involves a very important interest of the State. I think we should be very careful to regulate our elections so as to come on even years.

MR. WHITE. The section reported by the committee I see no objection to if the word "Legislature" was put in place of the word "Assembly." "Assembly" only takes the lower house.

MR. MORELAND. My amendment says the first term of the officers——

MR. WHITE. I would say "except the members of the Legislature."

MR. ESTEE. Will my friend permit me to make a suggestion. The original section now says: "In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected under the same, and whose term of office is four years or over, shall be, respectively, one year shorter than the term provided for in this Constitution, and the term of all officers whose term of office is two years shall be, respectively, one year longer than the term provided for in this Constitution, except the members of the Assembly, whose first term of office shall be one year." Now, the result is that the term will always be three years unless that is amended.

MR. WHITE. I supposed it was provided in the legislative article that we have adopted that the term should be four years, and that this merely provided for the first term. That should be amended, of course, in that respect.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: This discussion is assuming a proposition to have been agreed upon by this Convention, which has not yet been met and determined. I trust gentlemen will not vote upon a long term or a short term, until we meet the question squarely and determine whether we are going to change the elections from the odd to the even years. I say that the legislative committee has made no such change. On the contrary, the Constitution upon which we have acted contemplates State elections on the odd years, the same as it has been heretofore. If this stands as reported by the legislative committee, then this whole section ten of the Committee on Schedule is entirely unnecessary. It ought to be struck out, and the amendment ought to be voted down. It will stand then exactly as it was before. Now, sir, the error into which gentlemen have been led, who were not connected with that committee and familiar with its transactions, is the fact that the election should be held in November, because Presidential elections have been held in November, and it has been assumed that therefore State elections were to be held on the even years. The committee did not see proper to take any further action upon the subject that is reported in this section three, which is the only thing on the subject.

"The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Tuesday after the first Monday in November, and their term of office shall be two years."

That is the amendment which I proposed, having introduced it, not to bring the elections on the even years, but simply to have a uniformity, inasmuch as the Act of Congress requires that national elections shall be held that time of year, and so we changed from December to January as to the time of the meeting of the Legislature; it was thought to be just as good a time. Whether that amendment is a good one or not is of course not proper for me to say. I do not think it is of very much consequence—the change from September to November. The question is will we change from the odd to the even years? That is another thing, and in order to get a vote—I suppose it is in order—I move to strike out section ten of the report of the committee, simply to present that idea. There is only one real objection to this. That is, that by going on as heretofore we will have a Presidential election every four years, in which we have no other election—when no other officers are elected except Presidential electors and Congressmen. Now, there will be the expense of an election under this proposition, which might be saved if we would change this system. I submit that the saving is not worth the change.

It has been said here, that we must have two sessions of the Legislature successively, in order to meet this difficulty. If we elect members of the Legislature this year, and then elect them again in eighteen hundred and eighty-two, under the proposed change we would have no session of the Legislature for three years—the next session in eighteen hundred and eighty, and the following session in eighteen hundred and eighty-three. Therefore there would be a necessity to have succeeding sessions of the Legislature, and, sir, the cost of this extra session of the Legislature amounts to more than the costs of an election for President. Now, we have had this system heretofore, and I say it works well. My judgment is, that too much consequence is given to national politics, and too little to State politics. It is often of more consequence to the people who is elected Supervisor of a district, than who is elected President of the United States. I have been about as strong a partisan as most gentlemen on the floor, but my experience in the matter has convinced me that more attention to the local offices—and this is particularly true where the issues between national parties can scarcely be defined. I would like to see more consequence given to State politics, and less to national politics. I think we had better keep it as it is. There are so many difficulties about having two sessions of the Legislature in succession, which would be involved in this idea reported by the Committee on Schedule. I present this motion to strike out this whole section. As to whether the terms of officers should be extended, I would be in favor of shortening them rather than extending them—but I am discussing the main question, as to whether we should change our system or not.

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MR. MORELAND. I hope that this motion to strike out will not prevail.

THE CHAIRMAN. The motion is not in order, and will not be entertained until the other motions are disposed of.

MR. AYERS. Mr. Chairman: I hope that the amendments now before the committee will be voted down, and that the motion to strike out will prevail. I do not see any necessity for changing the time for holding the general elections in this State, and I say that the argument is strong and forcible that the general elections should be kept as they are now, apart from the national or Presidential elections. Under this Constitution we have created a very great many important offices which it will be more important for the people of this State to fill judiciously, than it will be whether this man or that man is elected President of the United States. It will be proper to keep our elections apart from the general elections of the Federal Government, and I hope that the amendment will be voted down, and that we will agree to the motion of the gentleman from Alameda to strike out the section and leave it as it is.

MR. BEERSTECHER. Mr. Chairman: I am in favor of the motion to be offered by the gentleman from Alameda, Mr. McCallum. I think the section ought to be stricken out——

MR. HAGER. If that motion is not before the House then you have spoken once on the subject pending.

MR. BEERSTECHER. I desire merely to say if the section is stricken out to the word "the," in the ninth line, it will be sufficient.

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: I hope the amendment to section ten will be voted down, and the motion to strike out, offered by Mr. McCallum, will prevail. Section three of the report of the Committee on Legislative Department, which Mr. McCallum referred to, expressly says, that the members of the Assembly shall be chosen biennially, and their term of office shall be two years. Now, we have agreed upon that in committee, and section ten is in direct conflict with section three of the legislative article, by providing that the terms of the members of the Assembly shall be but for one year. I do not think that we ought to undo what we have already done, especially, as this is better as it now stands. I have heard no objections with regard to the members of the Assembly holding for two years; and as I have claimed before, on this floor, upon questions of this character, where there is no change demanded by the people, I believe that we, acting in the interests of the people, should not favor a change where there appears to be no change demanded, and no change necessary. If there is any one thing that is more essential than another in official duties it is experience in office. The experience that a man has in public offices makes him qualified to perform his duties. I think that if section ten is stricken out and this report of the Committee on Legislative Department, section three, is agreed upon when we come into Convention, that then the ends will be subserved which the Committee on Schedule desire to have subserved by their report on section ten.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: It seems to me that you do not all understand this section alike. Now, the gentleman from Los Angeles says, that he is opposed to State elections coming on the same day with the Presidential election. Now, I understand that by this section we elect all our States officers on a year other than that in which the Presidential election is held. For instance, the next Presidential election is in eighteen hundred and eighty. We elect our Governor and State officers in eighteen hundred and eighty-two. We elect a President again in eighteen hundred and eighty-four, and State officers again in eighteen hundred and eighty-six. The only election that we would have at the time of the Presidential election would be some local officers and members of the Legislature. We certainly could stand that. It does seem to me that every two years is often enough to have an election. Now, if this amendment of Mr. Moreland is adopted, we would have an election every two years, and that is enough.

MR. AYERS. Wouldn't it bring the election for State officers and Presidential Electors on the same year?

MR. McFARLAND. The State officers would be elected in eighteen hundred and eighty-two, and the President in eighteen hundred and eighty-four. County officers would be elected both in eighteen hundred and eighty-two and eighteen hundred and eighty-four. One election in two years would be enough. They would both be important elections, and would both bring out the full vote.

MR. AYERS. Then I understand the gentleman to go on the idea that the State officers shall be elected in eighteen hundred and eighty-two instead of eighteen hundred and eighty. That is not the question before this Convention.

MR. McFARLAND. Under this section our State election will come in this year, in eighteen hundred and eighty-two, and again in eighteen hundred and eighty-six, and never touch the Presidential election—that is, if the section, as it stands, is adopted.

MR. AYERS. But suppose the amendment is adopted.

MR. MORELAND. It would come just the same under the amendment.

MR. McFARLAND. I think that is right. It will give an election every two years.

MR. SHAFTER. Mr. Chairman: The terms of the State officers, including judicial and legislative offices, are fixed in the Constitution, and it is probable that this motion has reference to some other class of officers. I would inquire what officers they are, that are elected for two years under this Constitution?

MR. McCALLUM. Members of the Assembly and county officers.

MR. SHAFTER. County officers are constitutional officers, but their terms of office are not fixed in the Constitution at all, and will not be governed by this amendment at all. County officers are utterly unaffected by it, for they are not elected for terms fixed in the Constitution. It simply declares that they shall exist. But their terms are not fixed in the old Constitution, and I am not aware that they are fixed in this.

MR. MORELAND. This last clause says that: "The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law."

MR. SHAFTER. They are elected under the statute, and not under the Constitution. It only applies to the constitutional terms.

MR. AYERS. Would a motion be in order to pass this section until after we consider the article on legislative department in Convention? I think it would be well.

MR. McCALLUM. Mr. Chairman: I desire to ask, whether the chair will entertain my motion to strike out, if this amendment should be adopted.

THE CHAIRMAN. Yes. The question is on the amendment offered by the gentleman from San Francisco, Mr. Swenson, to insert the word "first," between the word "the" and the word "term," as it occurs the last time in line four.

The amendment was adopted.

MR. WEST. The last clause of this amendment says, that "the first officers chosen after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law." The statute, at present, provides for the election of members of the Assembly, in September. They would hold office for one year under this provision. The point I wish information upon, is this: Do the committee expect to provide for the first two sessions of the Legislature, under the new Constitution, to be annual instead of biennial?

MR. McCALLUM. That would be the effect. I now make my motion to strike out section ten.

MR. SHAFTER. I move to strike out the word "shorter," and insert the word "longer."

MR. HAGER. This is out of order. It is going back to the original proposition. This proposition is to amend.

MR. McCALLUM. My motion is not in the nature of an amendment. My motion is simply to strike out.

THE CHAIRMAN. I entertain the motion, but all these motions precede a motion to strike out.

MR. WELLER. Mr. Chairman: The word "longer" will bring the gubernatorial and Presidential election both in the same year, and Mr. Moreland's amendment will bring the gubernatorial election in eighteen hundred and eighty-two. We do not want a Presidential election to interfere with our important State elections. We want an important election every two years. The consequence will be, under Mr. Moreland's substitute, that we will have our elections, Presidential and gubernatorial, alternately every two years.

MR. KEYES. Mr. Chairman: It appears to me that this Convention does not understand the proposition. I think for my part, that it is decidedly perferable to have the elections on the even years, and that is the proposition in the Moreland amendment. The people do object to having so many elections. It has been a cause of complaint in my part of the country, that we have too many elections.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: This matter is a matter that would properly have come before the Committee on Privileges and Elections, but as the Committee on Legislative Department saw fit to report upon this matter in relation to the election of Senators and Representatives, I have seen fit to allow this discussion without calling a meeting of that committee for this purpose. I am certainly opposed to extending the time of any officer beyond the time provided in the Constitution. I believe that the true policy would be to elect the State officers this Fall for three years, and then again in eighteen hundred and eighty-two. It would bring our county elections on the even years. It will obviate the necessity of a special Act of Congress every two years for the election of our Congressmen. A special Act was passed because we did not want to hold an election last year. To extend the time will throw the gubernatorial election with the Presidential election, which I think should be defeated.

MR. CROSS. My opinion is that the people did want an election this last year.

MR. LARKIN. I speak of the Legislature as representing the people. Now if you adopt the Moreland amendment, you will bring the State election in eighteen hundred and eighty-two, in eighteen hundred and eighty-six, and so on between the presidential elections on even years. It will bring your county elections on even years, and I think it would suit better. To extend the term of the Governor and State officers, I do not approve of. The officers elected next Fall will be elected for three years. The officers elected for county officers would be elected for one year, so as to make it come on the even year. We can elect county officers in eighteen hundred and eighty, at the time of the presidential election. We would elect again in eighteen hundred and eighty-two, so it brings your elections uniform on even years. It avoids election expenses and the complaints that Mr. Keyes alluded to. The people demand that we should retrench upon this matter, and should provide for elections so that all officers should be elected every two years, and that the city, county, and township elections should conform to the general elections. It costs as much to elect county officers as State officers. All elections should be so that they can be held on even years. That will correspond with the provision offered by Mr. Moreland.

MR. McFARLAND. Mr. Chairman: I merely wish to call the attention of the Committee to the fact that if the amendment offered by Mr. Moreland is not adopted, we will have an election every year. If you do not adopt this section, you will have State elections every odd year, and National elections every even year. We have had one or two special laws of Congress, and such was the dissatisfaction that they are

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going to compel the Congressional elections to be uniform throughout the United States; and they will come on the even year preceding the Presidential election. Then without this section we will have an election every year. It seems to me that it is a foolish expenditure of money. If you go on with the present system, you are bound to have an election every year, whereas, if you adopt the amendment, you will only have an election every two years.

MR. WHITE. Mr. Chairman: I submit to the members of this Convention whether it would not be better to strike this out, and, in connection with the article on legislative department, correct it as we wish. The fact is, we do not exactly understand the bearing of it.

MR. McCALLUM. What necessity is there for correcting the legislative article?

MR. WHITE. I say if the majority of the Convention wish to alter it, it appears to me that is the proper time and place to do it. I suggested that we would strike that out, and get it into a shape that would do it much better, and make no conflict between the two sections. There are a great many gentlemen who do not understand the bearing of the two sections upon each other. When we get into Convention we can alter it to suit.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: If the amendment of the gentleman from Marin prevails, one year is to be added to the terms of all offices. For instance, the first terms of the Supreme Court Judges will be thirteen years, the Governor five years, our Railroad Commissioners, all of whom are to be elected for four years, will serve five years. No opportunity for any change whatever for five years in that case. As to the two propositions, I am in favor of the shorter, if this system is to be adopted at all.

MR. AYERS. Would not the amendment of Judge Shafter bring the general State elections and the Presidential elections on the same year?

Mr. McCALLUM. Yes.

MR. AYERS. That is an evil which we should guard against.

MR. McCALLUM. It would extend the term one year instead of shortening it one year. If the amendment should be adopted it would not only not be in conformity with the legislative article, but the legislative article would have to be amended to conform to it, because all officers are to be elected at the next general election. We would then have to change that clause which requires them to be elected biennially, so as to be consistent with what we have already done. We have to vote down this amendment and strike out the section.

MR. WYATT. I believe that we are as well prepared to vote now as we will be. I move the previous question.

Seconded by Messrs. Freeman, Howard, of Los Angeles, Ayers, and West.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Marin, Mr. Shafter.

The amendment was rejected.

THE CHAIRMAN. The question is on the adoption of the substitute, offered by the gentleman from Sonoma, Mr. Moreland.

The substitute was adopted on a division, by a vote of 46 ayes to 40 noes.

MR. McCALLUM. Mr. Chairman: I move to strike out the section.

MR. TERRY. It has been adopted by the committee and cannot be stricken out. It is not an amendment or a substitute.

MR. McCALLUM. I asked that specific question, whether a motion to strike out could be entertained, and the Chair answered in the affirmative. To say that we could not make that motion would be simply to deprive the Convention of an opportunity to vote upon it at all. The President of the Convention has uniformly ruled for the last two weeks that this was the last motion to be put.

MR. HAGER. Mr. Chairman: This is nothing more than an amendment. It is adopted as an amendment, and the motion to strike out is perfectly in order, because the substitute is nothing more than an amendment.

MR. ESTEE. A motion to strike out without inserting anything is out of order.

MR. TERRY. The action of the committee in inserting these words is binding, and it cannot be stricken out. We have already adopted it, and we cannot undo what we have done.

MR. BLACKMER. There is nothing before the committee.

THE CHAIRMAN. There is a motion before the house. The point of order is raised that that motion is not in order. In the opinion of the Chair it is in order. The Chair will entertain it. The question is upon the motion of the gentleman from Alameda to strike out the section.

MR. SHAFTER. I appeal from the decision of the Chair.

Seconded by Messrs. Reed and Blackmer.

THE CHAIRMAN. The Chair has decided that the motion to strike out the section now, after it has been amended by a substitute, is in order. From that ruling there is an appeal taken by the gentleman from Marin. The question is: Shall the decision of the Chair stand as the judgment of the Committee?

MR. SHAFTER. Mr. Chairman: The general rule, as I understand it, is that after a legislative body has adopted a single proposition it cannot be overruled nor subverted by any process whatever. The only exception made is in our Rule Twenty-one: "Any member may call for a division of a question when the sense will admit. A motion to strike out and insert shall be deemed inadvisable; but a motion to strike out being lost shall neither preclude amendment nor a motion to strike out and insert." There has been no motion to strike out that has been lost. The section has been adopted just as it stands precisely, and it does not fall within this rule by any manner of means. If it did then you could have moved to amend, but having been adopted upon a distinct motion to adopt it, I do not see what power this committee has over it. It has been so ruled twenty times by the President during the session of this Convention. If a substitute is adopted we must pass to the next section. A motion to strike out a part of it and insert is not the adoption of the proposition itself. Here there has been a distinct vote to adopt it.

MR. HAGER. Mr. Chairman: I refer to Rule Thirty-two: "A substitute shall be deemed an amendment, and be treated, in all respects, as such." Now, according to the parliamentary rule, as I understand it, there is no such thing as a substitute at all, it is merely an amendment. The name substitute came into use by moving to strike out certain words and substitute others. This motion that has prevailed changes only about two words of that old section. The section is the same. A practice has grown up here which I have never seen anywhere else. I have seen whole sections recopied, with the change of only one or two words, and offered as a substitute. But this rule says that "a substitute shall be deemed an amendment and treated, in all respects, as such." The proposition offered by the Chairman of the Committee on Schedule was nothing more than an amendment.

MR. TERRY. Mr. Chairman: The motion of the gentleman from Alameda, as I understand it, was to strike out section ten, as reported by the committee. Now, that has been stricken out and another adopted. Now, what is there before the House? There is no motion to strike out the substitute.

MR. McCALLUM. My motion was to strike out section ten.

MR. TERRY. Section ten has been stricken out and other words put in its place.

MR. HAGER. Mr. Chairman: As I understand this thing, it is to put this thing back under the old Constitution, and have the elections in the odd years, instead of the even years. But perhaps we had better be cautious. A great many members are in favor of having the elections as they have been heretofore, so as to get them out of the Presidential elections, and of United States politics. Now, that is the question that ought to be determined first, by the Convention, whether we should have the elections in the odd or even years. It is a very easy matter. I regret the previous question was moved so early, because that is an important matter. I am inclined to favor the odd years. There is but one objection to it, and that is in regard to the congressional elections. Our congressional election should have been last year. This is an important question to be settled by this Constitution, whether it is disposed to have these elections as they were, in the odd year, or, as some think, and as it is proposed to change, to the even year? If this substitute stands as it is now, we are confined, of course, to the even years by the change, but if we strike it out, it leaves it open to an arrangement in the future. I am therefore in favor of striking out, and I am in favor of sustaining the ruling of the Chair. Under the rule we have adopted, this must be considered as an amendment.

MR. BEERSTECHER. Mr. Chairman: Mr. McCallum, of Alameda, made a motion to strike out. The Chair at that time decided the motion was not in order. There were two amendments before the House, one of which was adopted. The amendment offered by Mr. Moreland was also adopted. Now, the Chair decides that the motion to strike out is in order. Unless the ruling of the Chair is sustained, Mr. McCallum's motion to strike out is totally ignored, and any motion to strike out that may be made in this House must necessarily hereafter be ignored.

MR. TINNIN. Is a motion before the House until it is entertained by the Chair?

MR. BEERSTECHER. The Chair decided that the motion was not in order at that time, but would be in order after the amendments were disposed of. I shall vote to sustain the ruling of the Chair.

MR. ESTEE. Mr. Chairman: As I understand it this body has adopted a substitute for section ten. That is, this House was not satisfied with the original section, so it adopted something else different from the original section. It is true that our rules say that that substitute is nothing but an amendment, bnt it is an amendment representing the final action of this House. Now, the proposed amendment interposed by the gentleman from Alameda, is to strike out just what this House has just adopted, and that is unparliamentary. It cannot be done for this reason, that there never would be an end to the action of a legislative body; and the only means of reconsidering the action of a legislative body is by some member, who voted in the affirmative, giving notice of a motion to reconsider, and having it come up in its regular order. Again, let me say, that the ruling is not correct for another reason, that the gentleman moves to strike out section ten as originally presented. Section ten has been changed, and the result is as Judge Terry has stated. I think the house cannot reconsider. It is a well established proposition, that when a legislative body adopts any proposition, that proposition must remain as the action of that House, unless the proposition as amended be added to; but the original action cannot be changed except by adding to. You cannot strike it out. For that reason I shall have to vote to sustain the appeal.

MR. McFARLAND. Mr. Chairman: It seems to me that the ruling of the Chair is entirely correct. It does not follow because this body has amended a section that it has expressed its opinion in favor of the section. A majority of the committee may be against the whole subject-matter, and it may be willing to amend it, so as to get it in the best form it may be got into. Suppose a majority were opposed to section ten; how are we going to get rid of it? There is only one way, and that is to strike it out. We do not adopt these sections in Committee of the Whole. We simply take up the section, consider it, and amend it. If the committee does not amend it, we go on. Suppose a majority of the committee are opposed to the whole provision; what can they do except to move to strike it out? Will gentlemen say, that because this committee has amended this section they cannot strike it out? Suppose a majority of the committee, being undetermined how to vote on the whole proposition, vote to amend it, and after they have looked at the section as amended, they say: "Well, we are opposed to it anyway, notwithstanding the amendment. The amendment makes it better, but it

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ought not to be adopted even as amended." Is it not proper then to strike it out?

MR. HOLMES. Could the committee turn around now and strike out section nine?

MR. McFARLAND. Unless it was held that we had passed it and proceeded to the consideration of another section. Suppose the Moreland amendment had only referred to a portion of section ten; could you not have moved to strike out the whole section? Now his amendment really only relates to the amendment of the section. It is in the shape of a substitute, but it is an amendment in theory and substance. Will any gentleman tell me that after you have amended a section at all you cannot strike it out? If that is so the smallest amendment in the world would prevent the committee from striking out a section. I do not think that gentlemen ought to indulge in a violation of parliamentary rules. I am opposed to the motion made by the gentleman from Alameda, and should hate to see the section stricken out, but it seems to me that the committee has a right to strike it out if they see fit to do so. The committee has only adopted an amendment to the section, and now it is claimed that because we have adopted an amendment we cannot strike the section out.

MR. McCALLUM. Mr. Chairman: I wish to say that, in my judgment, the ruling of the Chair is not only in conformity with the ruling of the President of this Convention, but is in accordance with correct principles, and that the proposition has been argued entirely upon a wrong theory. The President of this Convention has frequently decided that the friends of a proposition had a right first to amend before a motion should be made to kill it, or indefinitely postpone it.

MR. ESTEE. Striking out is not the equivalent of indefinitely postponing.

MR. McCALLUM. The gentleman makes the mistake of supposing that this is like a legislative body passing bills, whereas it is a Constitutional Convention, acting upon different sections independent in themselves, as this is. Now, sir, if the gentleman were proceeding as Speaker of the Assembly, he would hold that the friends of a bill have a right first to amend it. After getting through with the amendments, if a motion was made to indefinitely postpone it he would entertain it. It comes up in its order after the amendments are disposed of. That is the only intelligent way.

MR. ESTEE. The object of going into Committee of the Whole is only for the purpose of suggesting amendments. That is what the Committee of the Whole is for. It does not finally dispose of any measure.

MR. McCALLUM. The rules of this Convention, prepared by a committee of which the gentleman was Chairman, provides, that in Committee of the Whole, the rules of the Convention shall govern, so far as applicable. This motion is equivalent to the one I have mentioned—that is to say, it shall not pass as amended; or, in other words, to strike out; or, in other words, to indefinitely postpone. To say the other thing would be to say that the object of all parliamentary law could be defeated by a parliamentary trick. Fearing that this question might be raised, and not knowing what might be the views of the Chairman, I raised this very point to ascertain whether the Chair entertained the views of the President, before the question was put on the amendment. The Chair said he would entertain the motion after the amendment was disposed of. I concede that an amendment cannot be amended after it is adopted. There is where the gentleman from Marin falls into an error. But this is not an amendment I offer. I propose substantially to indefinitely postpone, although a motion to indefinitely postpone is not in order in Committee of the Whole.

MR. DUDLEY, of Solano. The motion is simply a motion to strike out, and under the rules of the House of Representatives, the rule under which this Convention is operating, and under the universal practice of legislative bodies, it is proper to permit a motion to strike out after the friends of the section have come as near perfecting it as they can.

MR. WEST. Mr. Chairman: I move the previous question.

Seconded.

MR. SHAFTER. Mr. Chairman: I claim the right, under the rule, to be heard last.

THE CHAIRMAN. There is no such rule.

The main question was ordered.

THE CHAIRMAN. The question is: Shall the decision of the Chair stand as a judgment of the committee? The case is this: An amendment was offered to the section, called a substitute, and at that time the Chair was inquired of if a motion to strike out would be in order. The Chair ruled that it would not be in order until the friends of the section had amended it so far as they might wish to amend it. The question was put on the amendment, and it was adopted, and the Chair then entertained the motion to strike out. The question is: Shall the decision of the Chair stand as a judgment of the committee?

The decision of the Chair was sustained, on a division, by a vote of 51 ayes to 37 noes.

THE CHAIRMAN. The decision of the Chair stands as the judgment of the committee. The question is on the motion of the gentleman from Alameda, to strike out the section.

The motion was lost, on division, by a vote of 39 ayes to 54 noes.

MR. STEDMAN. Mr. Chairman: I desire to give notice that I will on Monday move to reconsider this vote.

THE CHAIRMAN. A motion to reconsider will not be in order. The Secretary will read section eleven.

CONSTITUTION TO TAKE EFFECT.

THE SECRETARY read:

SEC. 11. Should this Constitution be ratified at the election for the ratification and adoption thereof, it shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian.

MR. ESTEE. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend section eleven, line three, by striking out all after the word 'the,' to and including the words 'eighteen hundred and seventy-nine,' and insert the following: 'First day of March, eighteen hundred and eighty.'"

MR. ESTEE. Mr. Chairman: The reason for that amendment, or for some amendment requiring the Constitution to go into effect after the meeting of the first Legislature, seems to be obvious. There will be no code of practice for the new Courts prescribed in this Constitution, and there will be no machinery by which these Courts could be held in their respective counties and administer justice. This puts it only two months after the Legislature meets.

MR. BEERSTECHER. I call the attention of the gentleman from San Francisco, Mr. Estee, to section one of the report of the Committee on Schedule:

"SECTION 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature."

I would inquire of the gentleman whether he has read that section before.

MR. ESTEE. Well, I have read it before, certainly; but it is entirely inconsistent. Under the new judicial system we will have a Judge in every county in the State, and several Judges in some counties. Now we are obliged to have a Practice Act. Under the present system everybody knows, we have County Judges and we have District Judges.

MR. BEERSTECHER. Mr. Chairman: I do not myself see, and confess that I am unable to see, how a Legislature could meet and work under a Constitution not in force.

MR. ESTEE. Under the new Constitution are not the names of the judicial officers all changed, and their duties changed?

MR. BEERSTECHER. I do not see any difficulty in that.

MR. ESTEE. Then my friend does not understand the Practice Act, that is all.

MR. BEERSTECHER. This section which I have read provides that "the provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature." That seems to me to meet every objection of the gentleman. The only tangible thing that the gentleman has urged has been in relation to the judiciary, and there is nothing in that. The Practice Act will apply just the same in the Superior Courts as it applies to-day in the County Courts. The only thing will be that the District Judges will be wiped out. There will be no practical difficulty in the way at all. The idea of officers coming into power and assuming official functions, and the Legislature meeting here and attempting to legislate under the provisions of a Constitution not in force would seem to me to be decidedly an anomaly in the system of government. I am unable to see how it would be done. I think that section eleven, in connection with the other sections of the schedule, is not subject to criticism, and ought not to be amended or changed.

MR. TERRY. As there seems to be some difficulty in understanding what is going on here amid the confusion which prevails, I move that the committee now rise, report progress, and ask leave to sit again.

MR. SHAFTER. Mr. Chairman: I would like to offer an additional amendment, if the gentleman will withdraw his motion for that purpose.

MR. TERRY. I give way for a moment.

MR. SHAFTER. The section declares that "should this Constitution be ratified at the election for the ratification and adoption thereof, it shall take effect," etc. I want to know when it will take effect, if it is not ratified and adopted? I move to strike out the word "should" in the first line, and from the word "Constitution" in the first line down to the word "shall" in the second line, so that it will read, "this Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock, meridian.

MR. TERRY. I now renew my motion.

THE CHAIRMAN. The question is on the motion of the gentleman from San Joaquin, Mr. Terry, that the Committee rise, report progress, and ask leave to sit again.

The motion was lost.

MR. HOWARD, of Los Angeles. I move the previous question.

Seconded by Messrs. Ayers, West, Larkin, and Holmes.

The main question was ordered.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Marin, Mr. Shafter.

The amendment was adopted.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from San Francisco, Mr. Estee.

The amendment was rejected.

MR. HOWARD, of Los Angeles: Mr. Chairman: I move that the committee rise, report the article back as amended, and recommend its adoption.

The motion prevailed,

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IN CONVENTION.

President pro tem. Belcher in the chair.

THE PRESIDENT pro tem. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on schedule, have amended the same, and recommend its adoption as amended.

MR. MORELAND. I move that the usual number of copies be ordered printed.

The motion prevailed.

NOTICE.

MR. ROLFE. Mr. Chairman: I send up a notice.

THE SECRETARY read:

"I hereby give notice that on Monday, the twenty-seventh day of January, eighteen hundred and seventy-nine, I will move to reconsider the vote by which the Convention, this day, refused to adopt the amendment offered by Mr. McCallum to Rule Twenty-four."

MR. HOWARD, of Los Angeles. Mr. President: I move that the Convention do now adjourn. [Twelve o'clock, M.]

The motion was lost.

MR. GRACE. I move we go into perpetual session.

[Confusion.]

MR. McCALLUM. Mr. President: I move that we take up the article on executive department in Convention.

MR. ESTEE. Mr. President: I hope that when we approach the important duty of revising what we have done, that we will not do it without deliberation, and without a full house. I hope that if there is anything we can do in Committee of the Whole, we will do it, and commence, on Monday, with the understanding that we will take up the articles in Convention as they are on the file; and not commence on a Saturday, when we know we never have a full house, and that due deliberation is not given to the subject.

MR. AYERS. I hope that when we go into Convention that we will begin at the beginning. I hope that when this Convention goes into——

[Confusion.]

MR. HAGER. I would like to know what the question is?

THE PRESIDENT pro tem. There is a motion before the house, that the Convention take up for consideration the report of the Committee of the Whole on the Executive Department.

MR. AYERS. Now, all I wished to say was this, that I think that when we do go into Convention to finally consider these reports, that we shall proceed in order; that we shall commence at the Bill of Rights, and go through in the regular order. If we jump from one report to another, we shall find ourselves in confusion worse confounded. Now, I have no objections that this Convention should adjourn until Monday, but I am anxious to get through with the work. I have been here five months and have not been home. My business is suffering from my continued absence.

MR. McCALLUM. I withdraw my motion.

MR. HOWARD, of Los Angeles. I move that we adjourn. [Twelve o'clock and six minutes P. M.]

[Cries of "Division!" "Ayes and noes!" and continued confusion.]

THE PRESIDENT pro tem. The gentlemen must take their seats, or business cannot proceed. The question is on the motion to adjourn.

The motion was lost.

BOUNDARY.

MR. LARKIN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President pro tem. in the chair, for the purpose of considering the article on State boundaries.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the article.

THE SECRETARY read:

ARTICLE XII.

BOUNDARY OF THE STATE DEFINED.

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

MR. McCALLUM. That is the old Constitution. I move that the committee rise, report it back, and recommend its adoption.

MR. HAGER. I would ask the Secretary to read the history of the report.

MR. GRACE. It is a part of the history of our beloved country.

MR. BIGGS. I understand that our eastern boundary has been changed since the old Constitution was adopted. I ask for information.

MR. LARUE. I move to amend by adding as follows: "and to include Lower California, Sonora, Sinaloa."

MR. McCALLUM. My motion is, that the committee rise, report the section back, and recommend its adoption.

MR. SHAFTER. I hope that the gentleman from Alameda will not cut off amendments. I hope we will get some island in there, so that the workingmen can get some farms. Besides, the phraseology of the section is not good.

THE CHAIRMAN. The question is on the motion that the committee rise, report back the article, and recommend its adoption.

The motion prevailed.

IN CONVENTION.

President pro tem. Belcher in the chair.

THE PRESIDENT pro tem. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on State boundaries, report the same back, and recommend its adoption.

REPORT.

MR. DEAN. Mr. President: I desire to make a report from the Committee on Miscellaneous Subjects.

THE SECRETARY read:

MR. PRESIDENT: The Committee on Miscellaneous Subjects respectfully report that proposed amendments Nos. 8, 37, 52, 140, 141, 162, 164, 167, 176, 215, 220, 230, 235, 236, 243, 273, 281, 304, 317, 366, 375, 414, 416, 446, 463, 482, 488, 492, 507, 529, 530, and the several memorials and petitions relating to local option and mechanics' liens, have been considered by your committee, and the same are reported back to the Convention, with the recommendation that no further action be taken thereon.

The committee respectfully submit eighteen sections, forming an article on miscellaneous subjects, and recommend their adoption.

Messrs. Dean and Schomp dissent from sections sixteen and eighteen, and Mr. Lavigne from section eighteen.

Messrs. Farrell and Lavigne dissent from section fifteen.

JAS. E. DEAN,
J. SCHOMP,
R. LAVIGNE,
D. C. STEVENSON,
S. J. FARRELL,
J. M KELLEY,
P. M. WELLIN.

Following is the proposed article:

ARTICLE —.

SECTION 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding, unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature by a two-thirds vote of each House may provide, submitting the question of change to the people.

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

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

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

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

SEC. 4. All officers or Commissioners, whose election or appointment is not provided for by this Constitution, and all officers or Commissioners, whose office or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 7. No contract of marriage shall be invalidated for want of conformity to the requirements of any religious sect. But no marriage hereafter contracted in this State shall be valid between the parties thereto unless a public record thereof be made in such manner as may be provided by law.

SEC. 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done

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and material furnished; and the Legislature shall provide, by law, for speedy and efficient enforcement of said liens.

SEC. 16. The amount named in either a fire or marine insurance policy shall be deemed to be the true value of the property insured for insurance purposes.

SEC. 17. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold their position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SEC. 18. No persons other than citizens, or those who have declared their intentions to become such, shall hereafter acquire or own, either by purchase or otherwise, real property in this State contrary to this provision—such property shall escheat to the State; nor shall any lands in this State be held in trust for any alien; but the creation of any trust in lands for the benefit of an alien shall at once escheat the land to the State.

MINORITY REPORT.

MR. FARRELL. Mr. President: I send up a minority report.

Following is the report:

MR. PRESIDENT: The undersigned, a minority of your Committee on Miscellaneous Subjects, while agreeing in the main with the report of the majority herein, beg leave to submit their report, recommending that the following additional provisions be incorporated in the Constitution:

SECTION 1. Mechanics, artisans, laborers, material-men, and miners shall have liens upon the building, structure, mine, or other improvement upon which they have performed labor or supplied material, for the value of the work done or material furnished. And the Legislature shall provide by law for the speedy and efficient enforcement of such liens, making such building, structure, mine, or other improvement, and the owner thereof, responsible for such liens, notwithstanding any payment, settlement, or contract made by him with contractors or sub-contractors before such liens have been paid.

SEC. 2. Eight hours shall constitute a legal day's work.

SEC. 3. All public work—State, county, city, and city and county—shall be done by the day, and no contract shall be allowed except for supplying of material.

SEC. 4. The Legislature, at the first session after the adoption of this Constitution, shall provide by law for the compilation and printing of a complete series of school text-books, all the necessary mechanical work connected therewith to be done in the State Printing Office. The text-books thus compiled and printed shall constitute a uniform series of text-books, to be used in the public schools of this State after the first day of January, eighteen hundred and eighty-two, and shall be furnished to pupils at cost price. The printing of the codes and statutes of the State shall also be done in the State Printing Office.

SEC. 5. If any one who is a candidate for either House of the State Legislature shall publicly declare his intention to support, advocate, and vote for any particular measure or proposed law, and shall, after election, refuse to support, advocate, or vote for such measure or law, he shall be deemed guilty of a breach of trust; or if such a person make a public declaration that he will oppose, try to defeat, and vote against some particular measure or law, discussed before the people during his candidacy, and shall afterwards support, advocate, or vote for any such measure or law, he shall be deemed guily of a breach of trust, and in either case he shall, upon the sworn complaint of any five of his constituents, be brought to trial before a jury in the District Court of the county in which he resides, and, if convicted as charged, he shall forthwith forfeit his office, be fined a thousand dollars, and be ineligible thereafter to any office of honor, trust, or profit in the State.

SEC. 6. The complaint provided for in the previous sections shall be full and specific in its character, and among other necessary allegations allege that the complainants voted for the person complained of, and were induced to do so, in part, because of the public pledges given by him.

SEC. 7. A member of the Legislature proceeded against, as provided for in the two foregoing sections, can claim no exemption from prosecution on account of being a member of the Legislature.

SEC. 8. Any person who shall, directly or indirectly, offer, give, or promise any money, or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer, or member of the Legislature, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

SEC. 9. The offense of corrupt solicitation of members of the Legislature, or of public officers of the State, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

SEC. 10. No person from whom a divorce has been obtained shall, during the lifetime of the person obtaining the divorce, be again allowed to contract a marriage; such divorces to be obtained by civil action, in the District Courts only, for causes provided by law.

SEC. 11. No person possessing property, real, personal, or otherwise, and who has one or more direct heirs, shall ever be allowed to dispose of more than one third of said property, either by will or gift, in favor of any other person, corporation, society, or association. The remaining two thirds, shall become the property of his heir or heirs. And any sales which may prove illegal or fraudulent of any part of said property shall be declared null and void.

S. J. FARRELL,
P. M. WELLIN,
R. LAVIGNE.

MR. HOWARD, of Los Angeles. Under the rules of this Convention, it is the duty of the Chair to declare a recess until two o'clock.

MR. GRACE. I move that the minority report be read.

MR. MORELAND. I send up a resolution.

THE SECRETARY read:

Resolved, That the Surveyor-General be requested to furnish this Convention the proper boundary of this State.

Adopted.

MR. WELLIN. Mr. President: I was one of those who signed that report, but I should have dissented from that section where it says that the State shall be sued. I dissent from that section. I hope that the minority report will be read.

MR. BLACKMER. I move that the usual number of copies of the report be printed.

The motion prevailed.

THE PRESIDENT pro tem. The Convention will take the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

REPORT.

MR. FARRELL. Mr. President: I wish to present a minority report from the Committee on Miscellaneous Subjects, and ask that it be printed.

THE PRESIDENT. The question is: Shall the minority report be printed?

Carried.

LABOR AND CAPITAL.

MR. STEDMAN. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, to consider propositions number seventy-four and four hundred and seventy-six, on labor and capital.

Carried.

IN COMMITTEE OF THE WHOLE.

THE SECRETARY read section one of proposition number seventy-four, introduced by Mr. Beerstecher, and reported back by the Committee on Labor and Capital.

Mr. McCallum in the chair.

"SECTION I. There shall be a State Department of Labor and Labor Statistics, whenever the Legislature by vote shall so determine."

MR. STEDMAN. Mr. Chairman: I will state that these propositions were referred to the Committee on Labor and Capital. The committee were unanimously of the opinion that it would not be expedient to establish a Constitutional Labor Bureau, and if it had been left entirely with the Chairman of the committee, it would have been reported back with the recommendation that it be not adopted. But upon the solicitation of Mr. Beerstecher, in order that he might state his reasons before the Committee of the Whole, it was reported back without recommendation.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: As the author of this proposition, I desire to state the object. It is introduced at the solicitation and request of a large number of citizens of this State. It is not new to the people of the State. At the last session of the Legislature a bill to the same effect was introduced establishing a department of labor and labor statistics, or, as it was called, a Labor Bureau. The matter came up for consideration, and after full discussion of the merits and demerits of the project, it was finally adopted by both branches of the Legislature. The bill passing the latter part of the session, the Governor pocketed the same, and there the matter ended. In the present session of the Legislature of Nevada, a similar bill has been introduced and is pending. A Department of Labor and Labor Statistics has been in successful operation in Massachusetts, and exists there to-day. As the section reads as amended, it leaves the power in the Legislature, where it is to-day, but gives the measure the sanction of the Constitution. It has been found that the plan here proposed works well in Massachusetts. An examination will show that the condition of her laboring classes has been vastly bettered since the establishment of this department. It will be seen that they have no labor strikes, no destruction of property by labor riots. Whereas, though the advocates of a like measure have been agitating the question in Pennsylvania, New York, Maryland, and other States, they have not met with success, and the consequence was that in July, eighteen hundred and seventy-seven, there were violent labor outbreaks, which, in Pennsylvania alone, destroyed over fifty million dollars' worth of property.

A number of the intelligence and employment offices of San Francisco are operated by unprincipled men, who prey upon the necessities of the poor. I know, from my personal observation, that men have gone to these employment offices and have been informed that situations were awaiting laborers at Marysville and other interior towns—after paying two dollars and fifty cents for the addresses of persons wanting labor, proceeded to the designated points, failed to find employment, and were informed no demand for labor existed. Having expended their all for bogus information, they turned their faces towards San Francisco—tramps. Weary and footsore, discontented and moneyless, they return from whence they started. The worthless manager of a worthless employment fraud refuses to return the two dollars and fifty cents paid upon false representation. The workingman is remediless; no one cares for him. A short time ago, since the session of this Convention commenced, a report was published in a newspaper of Sacramento that men were wanted near Truckee; that three dollars per day would be paid. Numbers went, and found it a cruel hoax. If this department were established, it would have supervision over the labor of this State; would furnish reliable data in relation to the labor demand; also, report to the Governor and Legislature, and recommend such legislation as would be desirable, with reference to the laboring classes. As it now is, if labor troubles occur, no reliable information can be gotten. Perchance a legislative committee is formed in haste and sent to the city or town where the trouble exists, and upon a report hasty legislation is had. What individual or committee can make an intelligent report upon labor and its needs, having given the subject a mere twenty-four hours' examination? But the managers of a State department for this special subject can give intelligent and reliable information, upon which needed legislation can take place. If the laboring element of society in this State ever breaks loose, as it did in Pennsylvania in eighteen hundred and seventy-seven, more property would be destroyed in twenty-four hours than it would cost to maintain a labor bureau for fifty years.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: This proposition is a most remarkable proposition. It might be well in Europe, where the citizens belong to the Government, but not here. To a certain extent, the idea of establishing a Labor Bureau has been tested in this State, by the Act provid-

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ing for a Bureau of that kind, in eighteen hundred and sixty-seven. The principal man connected with that was Mr. White, of San Francisco. In eighteen hundred and sixty-nine they came to the Legislature and asked for ten thousand dollars to continue operations; the majority of the committee reported against them, but, by a combination in the Senate, it was carried, and five thousand dollars appropriated. The session following, they presented themselves again, and asked for ten thousand dollars more. Upon that, Dr. Pardee, of Alameda, moved for a committee to investigate the matter, and the report of that committee will be found somewhere in the Journals of eighteen hundred and seventy-one–seventy-two, showing that it had been a curse to the laborers of San Francisco. They had accomplished no good in that respect. It is only to make places for a few men, and no benefit will result to the free laboring man. It will tend to make laboring men dependent upon the Bureau for employment, rather than upon their own resources. I cannot support any proposition of this kind.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I see no need for a department in the shape that this is, anyway. If there is anything that is of real benefit to the laboring man, that I can see is a benefit to him, I will support it; but I consider this about as little benefit to the laboring classes as anything that could be imagined. Laboring men do not care for philosophical disquisitions upon labor and capital; they don't care for statistics showing the law of supply and demand, nor do they care for a great mass of statistics; what he wants, is to find out where he can get employment. If this was a proposition for an employment office, where the laboring man could be given employment, I would have no objection to it. If it would tend to bring employer and laborer together more effectually, I would have no objection, but it seems to me that this power exists in the Legislature already; it is not necessary for the Constitution to confer any such power upon the Legislature. But this seems to look only to the compiling of a huge mass of statistics, which would be of no practical value to the laboring man. It is not necessary to cumber the Constitution with anything of this sort.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I am in favor of the first part of this report—the first section, as amended. But the balance I don't think is necessary at all. I have been somewhat interested in this movement—not merely for a year or two years, but for ten or twelve years. The working people of San Francisco desire to have some place where employé can meet employer without being subjected to the expense and trouble of these so-called intelligence offices. But I do not think it necessary to put this report into the Constitution. We desire to have some recommendation in the Constitution, but we desire to leave it flexible. Therefore, I ask that this Convention adopt the first section as amended.

MR. HUESTIS. Notwithstanding the very able and plausible argument of the gentleman, I am of the opinion that it would be entirely wrong to incorporate this in the Constitution, and I therefore move to strike out the first section.

MR. HERRINGTON. I ask leave to offer a substitute to section one.

THE SECRETARY read:

"SECTION 1. The Legislature shall establish a Bureau of Statistics. It shall be the duty of this department to collect and publish, semi-annually, statistical details concerning every class of labor in the State, and the condition of all mines of the State, and the character, location, and condition of all lands belonging to the State, or the United States within this State, and their location, with such facts as will aid in their settlement and occupation."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. I understand that measures of this kind are of the highest importance, and should receive the most careful consideration. It makes but little difference how you may view this question, in view of the Constitution which you are now about to frame and submit to the people, you cannot ignore the fact that labor is the chief element upon which the national prosperity rests. It is that upon which we must depend. You cannot live upon speculation. You cannot live upon railroads. You cannot even live upon mines, as far as that is concerned. Labor is the foundation of our institutions, and that is the subject upon which the mind of the people have turned and are now resting. I submit that this is one of the most important departments of the State, and one which should receive the most earnest consideration.

MR. ESTEE. Cannot this be done by the Legislature, without any constitutional provision?

MR. HERRINGTON. Yes, sir; but it is not mandatory on them to do it. They have done nothing the past twenty-five years, and how do we know that they will do anything during the next twenty-five years. I desire to put it in an instrument that is to be submitted to the people, in order that they may put the stamp of their approval upon it, so that their wishes cannot be ignored. That is what we desire. You understand how the Legislature has been captured and controlled in times past better than I can tell you. This thing has been made of secondary consideration ever since the foundation of the State. Now, I say put into this instrument something which will be mandatory, and which will compel the Legislature to act. We have a provision in the Constitution which says that its provisions shall be mandatory. If we put this in the Constitution the Legislature cannot fail to act. I do not wish to leave it optional with them any longer. Twenty-five years' experience has shown us that they are unmindful of the interests of the laboring classes. I want the laboring men to know, when they come here, where our mines are; where our farms are. I hope that this subject will receive that careful consideration which its importance demands.

MR. ROLFE. Mr. Chairman: I move that the committee now rise, report back the subject under consideration, and recommend that it be indefinitely postponed.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: The Legislature has full power over this question. There is no doubt about that. I do not believe there is any gentleman here who will deny that proposition. In the next place, if we say that the Legislature shall have power to do so and so, it does not control them in the slightest degree. Not at all. The Legislature would have a perfect right to disobey it. Now, I make no objection to the first section, that there shall be a State Department of Labor Statistics when the Legislature shall see fit. I have no objections to that. I think it is all well enough. But when you undertake to make a bureau, and make a dozen officers, you undertake what will result in nothing, in my judgment. Now, some years ago, I had the privilege of knowing something about one of these labor bureaus in San Francisco, and I indorse all that Mr. Larkin has said, that the bureau was a total failure. It was merely to make a place for a lot of broken-down politicians, and did not benefit labor one dollar. The men who howled the loudest for this bureau were the ones who never did a day's work in their lives. When it was established a lot of old political hacks controlled it. I do not say that it will be so in future, but my idea is, if we attempt in our poor way here to establish a labor bureau, we will do that which will result in nothing to the laboring man. It will be a place for some of you gentlemen, and that is all. It will be saddling a labor bureau upon these men which will do them no good. I indorse the remarks made by the gentleman from San Francisco, Mr. Barbour, about statistics. You might as well try to teach a hungry man religion. You cannot succeed until you fill his stomach. They don't want statistics, they want bread for their families; they do not want a bureau, they want enterprises left open to them wherein one man's right hand is just as good as another's. And whenever you can propose any legislation in that direction, you will find that a large majority of this Convention will go with you. And when you attempt to impose a labor bureau of this kind on them, you are doing a great wrong, and injuring the cause you are striving to benefit.

I have no objections to declaring that there shall be such a department whenever the Legislature shall so provide, but they can do it just as well without any provision of this kind, and they can do it safely without our putting in any of these details about the salaries, etc. I venture the assertion that the man who would get that salary of two hundred dollars a month would be a man who never done a day's work in his life. He would be a man who has some kind of political influence. That is the kind of workingmen who usually get that kind of places. I don't think the gentleman who is the author of this proposition knows any more about the laboring interests than any other lawyer on this floor. He has had but a few months experience in California, while others of us have been here twenty-five years. I do not think he knows anything more about the laboring man than many of the rest of us, who have labored with our hands. I think there is a good deal of buncombe in that kind of a laboring man, who never did a day's work in their lives, and never expect to. When you tell me that labor is confined to any particular walk in life, or to any profession, you are denying the very first principles of labor, according to my idea. Wherever a man can do good; wherever a man can make two blades of grass grow where only one grew before, there you will find the true laboring man, who is of service to the country, and to the community where he lives. So far as a provision of this kind can do real good, I am for it; but so far as it amounts to buncombe and humbuggery, I am against it.

REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: I wish to say that I am in favor of that motion. I wish to embrace this opportunity to express my views and what I believe to be the views of the people of this State, against every form of bureaucracy. I believe, sir, the people of this State have not given up their faith in representative and responsible institutions. I believe that notwithstanding it is their habit to growl at the actions of each succeeding Legislature, that they do it by virtue of their inalienable right to growl at anything that does not suit them. I believe that the people of this State have not lost their faith in republican institutions, and that it is still their wish that the laws of this State shall be made by the representative Legislature of this State. That these matters shall be subject to change and revision; that they shall not be so embodied in the organic law as to be beyond the control of the people or the Legislature, and therefore it behooves us to be extremely careful not to embody anything in the organic law of the State which may properly be trusted to the Legislature, and which properly belongs to the legislative functions of the law making power of this State, elected by the people for that purpose. I am in favor of leaving this matter to the Legislature. I do not believe the people propose to surrender all their rights into the hands of these bureaus. I presume that most of the members agree with me on that proposition. I believe in holding the Legislature responsible. I believe in the right of the people to growl at them when they do wrong. Now, as to this matter, it is a matter coming fully within the power of the Legislature elected every two years. They can do any specific thing which the people may demand, that is not prohibited in the Constitution. We have already established one constitutional bureau, an irresponsible bureau, which in my judgment is quite sufficient. If this bureau should prove worthless, as it probably will, the people could not get rid of it without amending the Constitution. Now, sir, I don't believe that the Legislature of this State will ever be materially worse than the people who elect them. They are fully competent to represent the demands of the people, and as they have full power in this regard there is no earthly need of a constitutional provision of this kind. If we want a bureau of this kind, to lend encouragement to any class, we can have it any time we want it. I am in favor of the motion to indefinitely postpone this whole matter.

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REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope this motion to postpone the consideration of this important subject will not prevail. It is not treating those interested with due courtesy. If we are wrong in this matter, let us come to a vote and determine the issue. I desire to say to the gentleman from Mariposa, Judge Jones, who has spoken of representative government, that what we are after is a representative government—one in the full sense of the term. We want a government that represents every man, woman, and child, every class and condition, every interest in the State. What we do not want is a government which represents one interest and ignores all others. We do not desire the representing of capital at the expense of labor. Therefore, I appeal to gentlemen on this floor to say that the laborers' demands shall be recognized. The gentleman from San Francisco, Mr. Estee, grows eloquent talking about what he pleases to call "something else more desirable." This is an easy way to evade an obnoxious proposition, to say: "Give us something else." If the gentleman has something else, something better than that proposed, why in the name of reason and of justice does he not offer it? His "something else" is a method of evading a direct issue upon this question before the Convention. The gentleman from El Dorado, Mr. Larkin, who claims to be a hard-fisted son of toil, says this is a "European proposition, and antagonistic to American institutions." I deny the assertion. Had the gentlemau been paying attention to the debate, he would ere this have known that Massachusetts some years ago established a State Bureau of Labor and Labor Statistics, which has proved a blessing not only to the poor, but also to the rich. We desire this article to be incorporated in the new Constitution, that the laborer, the workingman, the hard-fisted son of toil, shall have a department of the State government devoted to his interests. The irrational, unconstitutional legislation of last Winter directed against the workingmen of San Francisco, would have been prevented by the existence of such a department of State, and the ferment in that city would have ceased long ere police and military forces were called into requisition. The rights of the working classes cannot be denied and withheld, and their wants ignored, for any length of time; for what they demand in justice they surely will receive, not as an act of justice to a class, but as an act of necessity for the nation's integrity; as an act tending to elevate the material, mental, moral, and physical condition of the people.

THE CHAIRMAN. The question is on the motion that the committee rise, report back the matter to the Convention, and recommend that it be indefinitely postponed.

Division being called, the vote stood—ayes, 40; noes, 29; no quorum voting. The question was put again, resulting in a vote of 43 ayes to 33 noes—no quorum voting.

MR. MURPHY. Mr. Chairman: I move that the committee rise.

Carried.

IN CONVENTION.

ADJOURNMENT.

MR. McFARLAND. Mr. President: I move that the Convention now adjourn.

Carried.

And at three o'clock P. M. the Convention stood adjourned until Monday morning at nine o'clock and thirty minutes.

ONE HUNDRED AND TWENTY-SECOND DAY.

SACRAMENTO, Monday, January 27th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M.

SECRETARY SMITH. The Convention will come to order and elect a temporary President, in the absence of the President and President pro tem.

On motion of Mr. Huestis, Mr. McCallum was chosen to preside.

Mr. McCallum in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Freeman,	Mansfield,
Ayers,	Freud,	Martin, of Santa Cruz,
Barbour,	Garvey,	McCallum,
Barry,	Glascock,	McConnell,
Barton,	Gorman,	McCoy,
Beerstecher,	Grace,	McFarland,
Bell,	Harrison,	McNutt,
Biggs,	Heiskell,	Moffat.
Blackmer,	Herold,	Moreland,
Boucher,	Herrington,	Morse,
Brown,	Hilborn,	Murphy,
Burt,	Holmes,	Nason,
Chapman,	Howard, of Mariposa,	Neunaber,
Charles,	Huestis,	Ohleyer,
Condon,	Hughey,	O'Sullivan,
Cross,	Hunter,	Prouty,
Davis,	Joyce,	Reddy,
Dean,	Kelley,	Rhodes,
Dowling,	Keyes,	Rolfe,
Doyle,	Kleine,	Shurtleff,
Edgerton,	Lampson,	Smith, of Santa Clara,
Estee,	Larkin,	Smith, of 4th District,
Evey,	Larue,	Smith, of San Francisco,
Farrell,	Lavigne,	Soule,
Filcher,	Lewis,	Stedman,
Steele,	Tinnin,	Weller,
Stevenson,	Tully,	Wellin,
Stuart,	Turner,	West,
Swenson,	Walker, of Tuolumne,	White,
Swing,	Waters,	Wilson, of Tehama,
Terry,	Webster,	Wyatt,

ABSENT.

Barnes,	Hall,	Reed,
Belcher,	Harvey,	Reynolds,
Berry,	Hitchcock,	Ringgold,
Boggs,	Howard, of Los Angeles,	Schell,
Campbell,	Inman,	Schomp,
Caples,	Johnson,	Shafter,
Casserly,	Jones,	Shoemaker,
Cowden,	Kenny,	Sweasey,
Crouch,	Laine,	Thompson,
Dudley, of San Joaquin,	Lindow,	Townsend,
Dudley, of Solano,	Martin, of Alameda,	Tuttle,
Dunlap,	McComas,	Vacquerel,
Eagon,	Miller,	Van Dyke,
Estey,	Mills,	Van Voorhies,
Fawcett,	Nelson,	Walker, of Marin,
Finney,	Noel,	Wickes,
Graves,	O'Donnell,	Wilson, of 1st District,
Gregg,	Overton,	Winans,
Hager,	Porter,	Mr. President.
Hale,	Pulliam,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Mills, Biggs, and Harvey.

Three days' leave of absence was granted Mr. Boggs.

MR. McFARLAND. There is barely a quorum present, and I move that this Convention take a recess until one o'clock.

[Cries of "Two o'clock."]

MR. LARKIN. There are some ten or twelve more members in town. There will be from eighty-five to ninety-five members here, and I object to taking any recess.

MR. McFARLAND. There is nothing to do except to commence upon the final action by the Convention upon the reports, and then if we should manage to keep a quorum here until noon, it will hardly be fair to act upon these questions with a bare quorum. At one o'clock we will have a large body.

MR. BROWN. Mr. President: The members are slowly coming in, and if we get in the habit, Monday morning, of leaving off business, members that are somewhat negligent will grow more so. I am under the impression that this Convention should act in such a way as to let members know that it is intended to proceed with business at once. I think it would be very improper to adjourn at this time.

THE CHAIR. The question is on the motion of the gentleman from Sacramento, Mr. McFarland.

The motion was lost.

THE JOURNAL.

MR. O'SULLIVAN. I move that the reading of the Journal be dispensed with, and the same approved.

THE CHAIR. If there be no objection, the reading of the Journal will be dispensed with.

MR. FREUD. I object.

MR. AYERS. I object.

THE CHAIR. The question is on the motion of the gentleman from San Francisco, Mr. O'Sullivan.

The motion prevailed.

MR. WHITE. Mr. President: I move that we take up the bill of rights in Convention.

MR. AYERS. I second the motion.

MR. O'SULLIVAN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. McCallum in the chair, for the purpose of further considering the section relating to labor and capital.

MR. WHITE. I withdraw my motion.

THE CHAIR. The question is on the motion of the gentleman from San Francisco, Mr. O'Sullivan.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the amendment offered by the gentleman from San Francisco, Mr. Beerstecher.

MR. ROLFE. The question was on the motion to rise, report back the subject-matter, and recommend its indefinite postponement.

THE CHAIRMAN. No motion would be in order except for the committee to rise, because there was no quorum present.

MR. ROLFE. I make that motion now. I wish to say——

THE CHAIRMAN. The question is not debatable except by unanimous consent.

[Cries of "Object."]

THE CHAIRMAN. The question is on the motion that the committee rise, report the article back, and recommend its indefinite postponement.

On a division, the votes stood 47 ayes to 21 noes.

THE CHAIRMAN. No quorum voting. Gentlemen will please vote. There is a quorum present. Vote on one side or the other.

On a division, the vote stood 44 ayes to 26 noes.

THE CHAIRMAN. The Secretary will count the committee.

MR. STUART. I move that the Convention take a recess.

MR. MARTIN, of Santa Cruz. I move that the committee rise.

THE CHAIRMAN. The Secretary is counting the committee.

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MR. FILCHER. I think these gentlemen ought to be compelled to vote, under the rule.

THE SECRETARY. Seventy-six members present.

THE CHAIRMAN. The Chair will direct the committee to rise, and direct the Secretary to call the roll.

IN CONVENTION.

The roll was called, and the following members found present:

Andrews,	Holmes,	Prouty,
Barbour,	Howard, of Mariposa,	Rhodes,
Barry,	Huestis,	Rolfe,
Barton,	Hughey,	Shurtleff,
Beerstecher,	Hunter,	Smith, of Santa Clara,
Bell,	Jones,	Smith, of San Francisco,
Blackmer,	Joyce,	Soule,
Brown,	Kelley,	Stedman,
Burt,	Kleine,	Steele,
Chapman,	Lampson,	Stevenson,
Charles,	Larkin,	Stuart,
Condon,	Larue,	Swenson,
Cross,	Lavigne,	Swing,
Davis,	Lewis,	Terry,
Dean,	Mansfield,	Tinnin,
Dowling,	Martin, of Santa Cruz,	Tully,
Doyle,	McCallum,	Turner,
Edgerton,	McConnell,	Vacquerel,
Evey,	McCoy,	Walker, of Tuolumne,
Filcher,	McFarland,	Waters,
Freud,	McNutt,	Webster,
Garvey,	Moffat,	Weller,
Glascock,	Moreland,	Wellin,
Gorman,	Morse,	West,
Heiskell,	Nason,	White,
Herold,	Neunaber,	Wilson, of Tehama,
Herrington,	Ohleyer,	Wyatt—83.
Hilborn,	O'Sullivan,	

THE CHAIR. There being a quorum present, and there being no objection, we will be considered in Committee of the Whole again.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the motion of the gentleman from San Bernardino, Mr. Rolfe, that the committee rise, report the article back, and recommend its indefinite postponement.

The motion prevailed, on a division, by a vote of 48 ayes to 34 noes.

IN CONVENTION.

Mr. McCallum in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole has had under consideration the article on labor and capital, report the same back, and recommend its indefinite postponement. The report of the Committee of the Whole will go on file.

MR. O'SULLIVAN. I move to take up the report of the Committee on Miscellaneous Subjects.

MR. BEERSTECHER. I understand that the report has been sent to the printer; that it is not yet printed, and the manuscript is in the hands of the printer. Consequently there is no report of the Miscellaneous Committee here.

MR. O'SULLIVAN. I withdraw the motion.

MR. MCFARLAND. Mr. President: I move that the Convention take a recess until two o'clock to-day.

QUESTION OF PRIVILEGE.

MR. WYATT. Mr. President: I rise to a question of privilege. In yesterday's Bulletin there appears, under the head of "The University Land Grant," the following:

THE CHAIR. I suppose this is not in order. A motion to adjourn until two o'clock is pending.

MR. MCFARLAND. I will withdraw the motion for the present, with the consent of the Convention.

MR. WYATT. The communication I refer to reads as follows:

EDITOR BULLETIN: Permit me through your journal to correct what would seem to be an erroneous statement of the amounts of land sold by the Regents on account of the Congressional grant of one hundred and fifty thousand acres, during the debates in the Convention, January twenty-second, in which it is admitted that the Regents have sold land in excess of the grant of one hundred and fifty thousand acres. The following statement, made by a special committee of the Board of Regents, in an interview in December last, with General Williamson, Commissioner of the General Land Office, will show the true status of the grant:

Number of acres listed	140,475.96
Certificates of purchase issued (listing asked for)	4,814.45
Total	145,290.41

From this amount of one hundred and forty-five thousand two hundred and ninety and forty-one hundredths acres must be deducted, at the lowest estimate, one thousand acres—erroneously listed—thus leaving five thousand seven hundred and nine and fifty-nine hundredths acres not listed or sold on account of the Congressional grant. In the Convention reports by the Record-Union, under date of the twenty-third instant, Mr. Wyatt stated "that a bill has been introduced into Congress confirming to the University forty-five thousand acres of land in addition to the grant already made. It was introduced at the request of the Regents of the University." The statement is not true. On the contrary, a draft of a Congressional bill was submitted to the Board with a request that they would, by their influence, aid its passage. The proposition was discussed by the Regents present, and it was thought best not to aid in the proposed legislation—the Regents being desirous of closing up the business of the Congressional land grant at as early a date as possible consistent with the best interests of the University.

A. S HALLIDIE.

San Francisco, January 24th.

I am not aware, Mr. President, what position Mr. Hallidie holds in connection with the University, if any. I suppose some connection with the land grant——

MR. AYERS. He is President of the Mechanics Institute.

MR. FREUD. He was.

MR. WYATT. Yes. The telegram to which I referred in the discussion on the twenty-second instant, with reference to the State University, is to be found in the Chronicle of January twenty-first, under the head of "Washington Telegrams," and reads as follows:

"Davis (by request). A bill to permit the University of California to purchase of the government, at the usual rates, forty thousand acres of public lands which have been selected in its behalf, but not allowed, in addition to the one hundred and fifty thousand acres granted by the government. It appears that the land agent having the subject in charge has overrun the limit, so as to select, on behalf of the University, one hundred and ninety-two thousand acres; and this is an attempt to legalize what is believed by some officials in the Land Office to be a great land grant. Davis introduced the bill by request, as he delays assuming the responsibility till after consultation with the authorities at the University."

In the discussion of this subject, on the twenty-second instant, the position which I took with reference to this matter was that it would be dangerous for this Convention to adopt section ten, as reported by the Committee on Education, because its adoption included all the acts of the University of the State of California by its Regents, and all the Acts of the Legislature, and that to do so would be a dangerous and unheard of proceeding, and that it might involve the State of California in a large law suit. I referred to this telegram as a part of the current history of the day, and it then made an impression upon my mind, from its reading, that it had been introduced at the request of the University, and I believe it will convey that impression to the minds of all readers. If the bill was not introduced at the request of the University, then it has been introduced at the request of some men who are making a cat's-paw of the University for the purpose of private peculation. Now, the communication of Mr. Hallidie says that "the proposition was discussed by the Regents present." How many Regents were present is not stated in the communication—whether one, two, three, or more. Whether those that were not present caused this to be introduced is not stated. In other words, it is left as loose and vague as possible, as to what is the action of the University upon this subject, in connection with these bills introduced into the Congress of the United States. On the twenty-second a telegram appears in the same paper, under the same head, which says:

Davis has written to the Regents of the University of California in regard to the bill validating the location of lands in addition to its grant of one hundred and fifty thousand acres, and will not press the bill till an answer is received. It is not likely the bill will pass.

Then in the Record-Union of January 25th is to be found the following telegram:

WASHINGTON, D. C., January 22, 1879.

Register and Receiver Stockton Land Office: You will neither receive nor file in your office any further selections on account of any grant to the State of California.

J. A. WILLIAMSON, Commissioner.

MR. TULLY. Where is the point of the privilege? What is your question of privilege?

MR. WYATT. The point I make as to the question of privilege is, that it is stated that the statement I made in referring to the telegram in the Chronicle was not true.

THE CHAIR. The Chair is of the opinion that it is a question of privilege to that extent.

MR. TULLY. I make the point that the gentleman is making an original speech.

THE CHAIR. The Chair is of the opinion that the gentleman has a right to speak specifically as to the proof of his statement—no further.

MR. HERRINGTON. I propose that the gentleman from Santa Clara have leave to withdraw.

Mr. TULLY. I have no objection to hearing any points the gentleman may have to make, but I do not wish to listen to the speech of last Saturday over again.

MR. WYATT. My statement was in the discussion of that subject, that the bill had been introduced referring to the telegram as read by myself here, giving the paper and head under which it was to be found, and that whatever idea would be conveyed in that to the mind of a reader, was the idea simply that I conveyed to this Convention.

BILL OF RIGHTS.

MR. MORELAND. Mr. President: I move that we proceed to consider the preamble in bill of rights.

MR. MCFARLAND. I move that the Convention take a recess until two o'clock.

Lost.

MR. LARKIN. Mr. President: I move we take up the executive department. There are very few amendments made to it.

THE CHAIR. That would involve a suspension of the rules. The Chair cannot entertain it as an amendment. If the gentleman moves the suspension of the rules——

MR. EDGERTON. My friend from El Dorado is probably more interested in the executive department than anything else. [Laughter.]

MR. LARKIN. What district do you represent?

MR. EDGERTON. I represent the Second Congressional District—El Dorado included.

MR. LARKIN. My reason is that the Chairman of the Committee on Bill of Rights is away.

MR. MORELAND. Is not the Chairman of the Committee of Executive Department away also?

MR. EDGERTON. I would ask if the Chairman of any other committee is not away.

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MR. LARKIN. I withdraw my motion, as the Chairman of the Committee on Taxation is here, having arrived from the lower country [laughter], and we will allow him to take up his report.

THE CHAIR. The motion is to take up the bill of rights.

MR. McFARLAND. Mr. President: Now, in the course of an hour or two, we will have two thirds of this Convention here. At this moment we have a bare quorum. Now I ask if it is fair to take up as important a matter as this? It seems to me that we might wait until there is at least a fair representation here. If a bare quorum undertakes to do anything that is not in accord with the views of the Convention, it will be overturned sure. There are plenty of ways of doing it. We are just starting in upon the Constitution in Convention. We will have a very full meeting this afternoon. I have no doubt but that from that time on we will have a full body, because I think that gentlemen from San Francisco and that part of the State coming here will perhaps stay over next Tuesday, and we may have next Saturday and Monday a full representation of the body. It seems to me that there would be no good come from starting in now with a bare quorum.

MR. WHITE. Mr. President: I hope we will proceed. The gentlemen from San Francisco all knew that we were going into Convention this morning. If we adjourn now it will keep us adjourning. I am in favor of continuing right at it, and show these gentlemen that they must be here if they intend to take any interest in this Convention.

THE CHAIR. The question is on the motion of the gentleman from Sonoma, Mr. Moreland, to take up the bill of rights.

[Cries of "Division," "Ayes and noes," and great confusion.]

MR. McFARLAND. Mr. President: I ask for the ayes and noes.

The ayes and noes were also demanded by Messrs. Huestis, Larkin, Hilborn, Joyce, and Barbour.

The roll was called, and the motion prevailed by the following vote:

AYES.

Ayers,	Herold,	Nason,
Barbour,	Herrington,	Neunaber,
Barry,	Holmes,	Prouty,
Barton,	Hunter,	Smith, of Santa Clara,
Bell,	Joyce,	Smith, of 4th District,
Brown,	Kelley,	Smith, of San Francisco,
Burt,	Kleine,	Soule,
Charles,	Lampson,	Stedman,
Condon,	Larkin,	Swenson,
Cross,	Lavigne,	Swing,
Davis,	Lewis,	Terry,
Dean,	McCallum,	Tinnin,
Dowling,	McConnell,	Walker, of Tuolumne,
Doyle,	McCoy,	Waters,
Evey,	Moffat,	Webster,
Filcher,	Moreland,	Weller,
Garvey,	Morse,	West,
Harrison,	Murphy,	White—55.
Heiskell,		

NOES.

Andrews,	Hughey,	Rolfe,
Beerstecher,	Jones,	Shurtleff,
Blackmer,	Larue,	Steele,
Chapman,	Mansfield,	Stevenson,
Edgerton,	Martin, of Santa Cruz,	Stuart,
Glascock,	McFarland,	Tully,
Gorman,	McNutt,	Turner,
Hilborn,	Ohleyer,	Vacquerel,
Howard, of Mariposa,	O'Sullivan,	Wilson, of Tehama,
Huestis,	Rhodes,	Wyatt—30.

THE CHAIR. The Secretary will read the first section.

Mr. TULLY. I move that the Convention adjourn until two o'clock.

Lost.

THE CHAIR. The Secretary will read the first section.

THE SECRETARY read:

DECLARATION OF RIGHTS.

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

THE CHAIR. Is there any amendment to section one?

MR. TULLY. Mr. President: I rise to a point of order. Rule Forty-nine says: "Every resolution proposing any alteration in the Constitution shall be read on two several days before it is finally acted upon and adopted by the Convention."

MR. WATERS. I understand that it has been read several times now.

MR. AYERS. All the reports have been read in Convention when reported.

THE CHAIR. Section one of the article on bill of rights has been read in Convention when reported by the committee, besides being read in Committee of the Whole. The Chair is of the opinion that this is the second reading. If there is no amendment to this section the Secretary will call the roll. Those in favor of the section will say "aye," when your names are called, those opposed, "no."

The roll was called, and the section adopted by the following vote:

AYES.

Andrews,	Blackmer,	Davis,
Barbour,	Brown,	Dean,
Barry,	Burt,	Dowling,
Barton,	Charles,	Doyle,
Beerstecher,	Condon,	Edgerton,
Bell,	Cross,	Evey,
Filcher,	Lewis,	Smith, of San Francisco,
Freud,	Mansfield,	Soule,
Garvey,	Martin, of Santa Cruz,	Stedman,
Glascock,	McCallum,	Steele,
Gorman,	McConnell,	Stevenson,
Grace,	McCoy,	Stuart,
Harrison,	McFarland,	Swenson,
Heiskell,	McNutt,	Swing,
Herold,	Moffat,	Terry,
Herrington,	Moreland,	Tinnin,
Hilborn,	Morse,	Tully,
Holmes,	Murphy,	Turner,
Howard, of Mariposa,	Nason,	Vacquerel,
Huestis,	Neunaber,	Walker, of Tuolumne,
Hughey,	Ohleyer,	Waters,
Hunter,	O'Sullivan,	Webster,
Jones,	Prouty,	Weller,
Joyce,	Reddy,	Wellin,
Kelley,	Rhodes,	West,
Lampson,	Rolfe,	White,
Larkin,	Shurtleff,	Wilson, of Tehama,
Larue,	Smith, of Santa Clara,	Wyatt—85.
Lavigne,	Smith, of 4th District,	

NOES—None.

THE CHAIR. The Convention has agreed to section one.

MR. GRACE. Mr. President: I would like to state my views about this. I do not think it is policy for us as representatives of the people to go on now to final action on these sections, when there is such a thin house as this here.

MR. AYERS. Order.

MR. WYATT. Order.

[Cries of, "Order;" "Go on;" "Sit down;" and general confusion.]

THE CHAIR. The Convention will come to order. The Secretary will read the second section.

POLITICAL POWER.

THE SECRETARY read:

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

MR. McFARLAND. Mr. President: I offer an amendment to section two.

THE SECRETARY read:

"Amend section two by adding thereto as follows: 'but government can be altered or reformed only in accordance with previously established law.'"

MR. HILBORN. Mr. President: I move that we adjourn. I think it is a crime——

THE CHAIR. It is out of order.

MR. HILBORN. A motion to adjourn is always in order.

MR. ROLFE. I second the motion.

MR. GRACE. I move that we take a recess until two o'clock.

THE CHAIR. The gentleman can move that the Convention adjourn until a certain time. A motion to adjourn now without fixing the time is not debatable. You have to first fix the time to which you will adjourn, and then move to adjourn. That is my ruling.

MR. WEST. Mr. President: There is a working majority here present—a quorum of this Convention. It is proper and right that we proceed.

MR. HILBORN. The motion is not debatable.

MR. GRACE. I made a motion to take a recess until two o'clock.

THE CHAIR. It is a motion substantially to adjourn now until two o'clock. The word recess don't change the substance of the motion.

MR. AYERS. I move to amend the motion. I move to adjourn until five minutes of two o'clock.

MR. WEST. I second the motion.

The amendment to the motion was lost.

MR. WEST. We are now in Convention. There is a quorum present. It is legitimate and right that we proceed in regular order in the discharge of the duties imposed upon us by our office, and by our oath of office. Now there is a disposition here this morning, on the part of members, to postpone and to demoralize, and by foolish motions—pardon me for that expression—to stand and oppose the regular order of business. I hope that the Convention will not entertain any of these motions, but that we will proceed in regular order to the consideration of this report, and that we will spend no more time foolishly.

THE CHAIR. The question is on the motion to take a recess until two P. M.

The motion was lost.

MR. JONES. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section two by inserting in line three, between the words 'same' and 'whenever,' the words 'by proceeding in accordance with law.'"

MR. JONES. Mr. Chairman: The amendment I think, has substantially the effect of that offered by the gentleman from Sacramento, but does so by the interposition of three or four words, without changing the form of the paragraph. It is a clear expression of that which I suppose has been intended to be the meaning of that section. At the same time, the section without these words has been understood, by some persons, to be a sanction in the Constitution itself, of the right of revolution. The right of revolution is an ultimate right. It is not one to be provided for in the organic law, because it not supposed that we will embody in the Constitution the seeds of its own destruction. I

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think it is proper that these words should be added there, to take away all the ambiguity, and all chance of its being so construed.

MR. WHITE. If your theory is right, how could your Colonies ever secede from England?

MR. JONES. They took the ultimate right of revolution. No government ever provided in its laws for its own destruction.

MR. WHITE. The question is, if your theory is right, could the Colonies ever have seceded from England?

MR. JONES. Yes; they would have seceded from England just as they did. The right of revolution is a fundamental, legitimate right; but we are not providing for revolutions in this Constitution. We are providing for that which shall proceed by process of organic law.

MR. TULLY. Mr. President: I suppose that these amendments are in the nature of a resolution to change and alter the Constitution. They certainly are original propositions, and have not been read upon two several days, as provided for in Rule Forty-nine. I make that point of order, that the amendments are original resolutions, proposing to change and alter the Constitution, and that they have not been read on two several days.

THE CHAIR. The Chair is of the opinion that the point of order is not well taken.

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

Seconded by Messrs. Larkin, Reed, Hunter, and Morse.

THE CHAIR. The question is on the amendment offered by the gentleman from Sacramento, Mr. McFarland. The Secretary will call the roll.

MR. McFARLAND. I desire to say a word upon that question.

THE CHAIR. The Chair has deprived the gentleman of the opportunity, by directing the Secretary to call the roll, under the impression that the Convention was ready to vote. I suppose that courtesy would induce the gentleman from Del Norte to withdraw his motion.

MR. LARKIN. The Chair directed the Secretary to call the roll, and the Chair could not recognize the gentleman after the roll commenced to be called.

THE CHAIR. The Chair is of the opinion that the point is not well taken; that until the roll call has been commenced, the gentleman has a right to address the Chair. The gentleman from Sacramento has the floor.

MR. WATERS. Mr. President: I rise to a point of order. The previous question upon these pending amendments was moved by the gentleman from Del Norte, and seconded by the requisite number. The Chair did not put the motion. The gentleman from Sacramento is not in order until that motion is put.

THE CHAIR. The Chair will state that the gentleman from Del Norte was recognized, but his motion was not at that time put on account of an apprehension, on the part of the Chair, that the vote would be taken. Then the Chair again called upon the gentleman from Del Norte to know whether he desired to withdraw his motion, and he declined to make any response. The Chair now recognizes the gentleman from Sacramento as having the floor.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. President: I am sorry, indeed, that some of my friends are trying to distract business by raising these points of order. I am in earnest in this amendment. My amendment is practically the same as that of the gentleman from Mariposa. I never heard of a Constitution recognizing in its text the right of destroying it illegally and unlawfully—the amendment is to put the Constitution on the well recognized theory of the American Government. I want to have in this Constitution the principle announced by Thomas Jefferson and Daniel Webster, that you cannot change your Government except in accordance with the law. It seems to me that either the amendment I have offered or the one offered by the gentleman from Mariposa, should be put into this Constitution, so that when we are undertaking to frame an organic law we will not put into its text a proposition for its destruction. This section as it stands provides that the Government may be changed in any way.

MR. ANDREWS. Mr. President: I wish to ask if the section as reported is not the same as the present Constitution?

MR. McFARLAND. Yes. I supposed that the gentleman from Shasta was here for the purpose of changing this Constitution. What folly it is to say that a thing must be done because it is in the old Constitution. Now, if the gentleman will join with me and say that nothing shall be changed in the old Constitution, I shall consider his argument will have some weight. In framing the Constitution now, we ought to say that our Government can be changed only in accordance with this Constitution and the laws provided under it. I hope that my amendment, or that of the gentleman from Mariposa, will be adopted.

THE CHAIR. The Chair will call the attention of the Convention at this time to the fact that it is his impression that under Rule Fifty-five these amendments, offered to the sections in Convention, do not require the ayes and noes. The ayes and noes will come on the section as amended, unless demanded on the amendments by five members.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I am opposed to these amendments, and I am opposed to them because they will subserve no good end; and I would like, Mr. President, if the Convention would simply get down to work instead of creating confusion and trying to delay business. It is held by authority that is unimpeachable, that has stood the test ever since the organization of the government of the United States, and every State in it, that the theory of our political system is that the ultimate sovereignty is in the people, from whom springs all legitimate authority. The people of the United States created a national Constitution, and conferred upon it powers of sovereignty over certain subjects, and the people in each State created a State government to exercise further powers of sovereignty, so far as they were allowed to exercise them at all. By the Constitution which they established they not only tied up the hands of their official agencies, but their own hands as well. But neither the officers of State, nor the whole people as an aggregate body, are at liberty to take action in opposition to this fundamental law. But in every State, although all persons are under the protection of the government and obliged to conform their actions to its laws, there are always some who are excluded from participation in the government, and are compelled to submit to the authority of the government in the creation of which they have no voice. It does not appear that original sovereignty in any case has ever existed since the organization of the Government of the United States, and whenever a State Constitution is framed and adopted the people themselves place themselves under it. Now we have made a provision for the amendment of the Constitution. We have embraced in the article on future amendments all the provisions requisite to tie up the hands of the people, in so far as we desire them to be tied up. Now what is the use of doing anything further and putting into this section a clause which is not only perverting the sense of the section, but is endeavoring to tie us down to the action of the Legislature. It is not the policy of the people. Their acts should be left free. Their minds should be left free to act, in so far as they see fit to act, in reference to this clause which is put in the Constitution authorizing them to alter or reform it whenever the public good may require. It is simply a declaration of the right which we all admit to exist.

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

Seconded by Messrs. Ayers, Hunter, Condon, and Murphy.

The main question was ordered.

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

MR. WALKER, of Tuolumne. Ayes and noes.

MR. HILBORN. Ayes and noes.

MR. HUNTER. Ayes and noes.

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from Sacramento, Mr. McFarland.

The amendment was rejected.

MR. HILBORN. Five members called for the ayes and noes.

THE CHAIR. Only three were recognized. The question is on the adoption of the amendment offered by the gentleman from Mariposa, Mr. Jones.

The amendment was rejected.

MR. BARBOUR. I desire to offer an amendment.

THE CHAIR. It is not in order.

MR. BARBOUR. I have been on the floor every time endeavoring to offer an amendment which was offered in the Committee of the Whole, and I have a right to offer it here.

THE CHAIR. The Chair did not hear the gentleman. I am under the impression that the previous question in Convention reaches the original section.

MR. BARBOUR. And cuts off all amendments?

THE CHAIR. I think it does.

MR. GRACE. There are some gentlemen who have not had——

THE CHAIR. The Secretary will call the roll.

MR. GRACE. I have a right to be heard here.

[Great confusion.]

THE CHAIR. Order! The gentleman can rise to a point of order, but not address the Convention.

MR. GRACE. I rise to a point of order. The rules of the Convention specially provide that the moving of the previous question shall not prevent the offering of further amendments.

THE CHAIR. The Chair is under the impression that the rule was made to apply to the Committee of the Whole. If some gentleman will find the rule——

MR. GRACE. The rules applied to the Convention and the Committee of the Whole the same.

THE CHAIR. The general parliamentary rule requires that the previous question reaches the original proposition. The Secretary will proceed with the call of the roll.

MR. STEDMAN. Mr. President——

The roll was called, and the section adopted by the following vote:

AYES.

Andrews,	Heiskell,	Moreland,
Ayers,	Herold,	Morse,
Barry,	Herrington,	Murphy,
Barton,	Holmes,	Nason,
Beerstecher,	Howard, of Mariposa,	Neunaber,
Belcher,	Huestis,	Ohleyer,
Bell,	Hughey,	O'Sullivan,
Biggs,	Hunter,	Prouty,
Blackmer,	Jones,	Reddy,
Brown,	Joyce,	Rhodes,
Burt,	Kelley,	Rolfe,
Charles,	Keyes,	Shurtleff,
Condon,	Kleine,	Smith, of Santa Clara,
Cross,	Lampson,	Smith, of 4th District,
Davis,	Larkin,	Smith, of San Francisco,
Dean,	Larue,	Soule,
Dowling,	Lavigne,	Stedman,
Doyle,	Lewis,	Steele,
Evey,	Mansfield,	Stevenson,
Filcher,	Martin, of Santa Cruz,	Stuart,
Freeman,	McCallum,	Swenson,
Freud,	McConnell,	Swing,
Garvey,	McCoy,	Terry,
Glascock,	McFarland,	Tinnin,
Gorman,	McNutt,	Tully,
Harrison,	Moffatt,	Turner,

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Vacquerel,	Webster,	White,
Walker, of Tuolumne,	Weller,	Wilson, of Tehama,
Waters,	West,	Wyatt—87.

NOES—None.

THE CHAIR. The Chair would call the attention of the Convention to Rule Thirty-five, and also to Rule Fifty-six, with reference to this point of the previous question reaching the main question. In Convention, by Rule Thirty-five, the previous question reaches the main question. No amendment can be made in Convention after that. Rule Fifty-six was amended so as to apply to the Committee of the Whole. There is that difference.

NOTICE OF RECONSIDERATION.

MR. HUESTIS. Mr. President: I now give notice, that on to-morrow I will move to reconsider the vote by which this section has been adopted.

RIGHT OF SECESSION.

MR. FILCHER. I move to strike out section three.

MR. TINNIN. I second the motion.

THE CHAIR. The Secretary will read section three, and then the amendment proposed by the Committee of the Whole as a substitute for it.

THE SECRETARY read:

SEC. 3. We recognize the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land.

By the Committee of the Whole:

SEC. 3. That this State shall ever remain a member of the American Union; that the people thereof are a part of the American nation; that there is no right on the part of this State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union, or sever said nation, shall be resisted by the whole power of the State.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: I move to strike out the section, and in doing so I wish to remark that there is no such section in the present Constitution. Section four in this report occupies the place of section three in the Constitution, as it now stands. Among the principles enunciated, there are some which I cannot indorse. As far as the secession clause is concerned I do indorse it. I believe it is unnecessary to make a declaration of this kind. If there was any apprehension that the people of this State are unloyal to the Union, or ever had been, it might be wise and judicious to make some declaration of our loyalty and allegiance. But, further than that, there is a principle enunciated here which is purely political in its character, and for that reason is decidedly objectionable. That is the declaration that the people are a part of the American nation. I hate to refer to politics on this floor. There are those in the Republican party who declare and believe this to be a nation, but it is not the universal idea even in that party, and there is no Democrat that indorses the doctrine. We believe it is a representative government, and not a nation; a confederation of States, bound together for the protection and good of all. Since it is partial, and not universal in its application, and as it has no significance in the Constitution, I am in favor of striking it out entirely. If, in the judgment of this body, it is thought that something of the kind is necessary to show the allegiance that we owe to the government, in the event that the motion to strike out should fail, I would offer a proposition of this kind: "Every citizen of this State owes allegiance to the Constitution and government of the United States, and any law or ordinance of the State in contravention or subversion thereof shall have no binding force." There is a doctrine accepted by every loyal American citizen; one that we can all consistently indorse, and which I apprehend will be objectionable to none. It is unwise to insert in the Constitution that which, without doing any good, would excite the prejudices of some. Therefore I hope that the motion to strike out will prevail.

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

Seconded by Messrs. Joyce, Larkin, Hunter, and Reddy.

The main question was ordered, on a division, by a vote of 48 ayes to 34 noes.

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

Seconded by Messrs. Hilborn, Holmes, Herrington, and Freeman.

MR. BARBOUR. Mr. President: We must first take a vote upon the report of the Committee of the Whole, and then will come the vote upon the motion to strike out.

THE CHAIR. The Chair is of the opinion that that is the form. The first question will be on the amendment proposed by the Committee of the Whole.

MR. McFARLAND. I understand that the report of the Committee of the Whole was adopted by the Convention. I understand that the amendments adopted in the Committee of the Whole form the report. I understand that they take the place of the report.

THE CHAIR. This is different. The first question is: Will the Convention agree to the amendment proposed by the Committee of the Whole? on which the ayes and noes must be taken. The Secretary will call the roll.

MR. HERRINGTON. Mr. President: I rise to a point of order. The point of order is this, if the previous question is sustained and the main question is now to be put, I would call the attention——

[Confusion.]

THE CHAIR. The gentleman will state his point of order.

MR. HERRINGTON. I do not rise to a point of order for the——

[Great confusion.]

MR. TINNIN. I want to know what we are voting on.

THE CHAIR. Voting on the amendment proposed by the Committee of the Whole.

MR. McFARLAND. I want this matter determined. My point of order is this, that there is no such question before the Convention as the adoption of the section reported by the Committee on Preamble and Bill of Rights. Our action is on the section reported by the Committee of the Whole. That takes the place of the original section as reported by the committee, except a motion to strike out should prevail. My understanding is, that the amendment was adopted in the place of the original section.

THE CHAIR. The Secretary will call the roll.

THE SECRETARY commenced the calling of the roll amid great confusion.

THE SECRETARY. Mr. President: There is too much noise. I cannot hear the responses.

THE CHAIR. The Secretary cannot hear the responses. The Convention will preserve order.

MR. EDGERTON [when his name was called.] I vote "aye," upon condition that the Committee on Revision and Adjustment make a decent, grammatical, and intelligent section of it.

Upon the question: Will the Convention concur in the amendment reported by the Committee of the Whole? the ayes and noes having been demanded by the requisite number, the roll was called, and the amendment was rejected by the following vote:

AYES.

Barry,	Hilborn,	Ohleyer,
Belcher,	Huestis,	Rhodes,
Bell,	Jones,	Rolfe,
Blackmer,	Keyes,	Shurtleff,
Boucher,	Lampson,	Smith, of 4th District,
Chapman,	Lewis,	Soule,
Charles,	McCallum,	Steele,
Dean,	McConnell,	Stevenson,
Edgerton,	McFarland,	Turner,
Evey,	Morse,	Weller,
Freeman,	Murphy,	Wellin,
Freud,	Nason,	West—38.
Gorman,	Neunaber,	

NOES.

Andrews,	Herold,	O'Sullivan,
Ayers,	Herrington,	Prouty,
Barbour,	Holmes,	Reddy,
Barton,	Howard, of Mariposa,	Smith, of Santa Clara,
Beerstecher,	Hughey,	Smith, of San Francisco,
Biggs,	Hunter,	Stedman,
Brown,	Joyce,	Stuart,
Burt,	Kelley,	Swenson,
Condon,	Kleine,	Swing,
Cross,	Larkin,	Terry,
Davis,	Larue,	Tinnin,
Dowling,	Lavigne,	Tully,
Doyle,	Mansfield,	Vacquerel,
Filcher,	Martin, of Santa Cruz,	Walker, of Tuolumne,
Garvey,	McCoy,	Webster,
Glascock,	McNutt,	White,
Grace,	Moffat,	Wilson, of Tehama,
Harrison,	Moreland,	Wyatt—55.
Heiskell,		

THE CHAIR. The substitute proposed by the Committee of the Whole is lost. The next question is on the motion to strike out the section.

MR. BARBOUR. Nothing can be done but to vote on the original section.

THE CHAIR. The question is on the motion to strike out.

MR. ROLFE. I would like to inquire what there is to strike out?

MR. TULLY. Would a substitute be in order?

THE CHAIR. We are acting under the previous question. A substitute is not now in order. The question is on the motion to strike out.

Messrs. Beerstecher, Barton, Larkin, Brown, Hunter, and Freeman demanded the ayes and noes.

MR. GRACE. I rise to a point of order. My understanding is that the previous question goes only to the pending amendments.

THE CHAIR. The Chair decides that the point of order is not well taken.

MR. GRACE. I appeal from the decision of the Chair.

MR. WEST. I rise to a point of order. My point of order is this, that the main question and the only question before this Convention was, on the agreement with the recommendation of the Committee of the Whole, and that the previous question was exhausted and the final vote was taken in rejecting the section reported by the committee.

THE CHAIR. The Chair is of the opinion that the point of order is not well taken. The gentleman from Placer had made his motion at the time the previous question was moved. The question now is on striking out the section as reported by the Committee on Preamble and Bill of Rights.

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

AYES.

Andrews,	Doyle,	Howard, of Mariposa,
Ayers,	Filcher,	Hunter,
Barbour,	Garvey,	Joyce,
Barry,	Glascock,	Kelley,
Beerstecher,	Gorman,	Kleine,
Bell,	Grace,	Larkin,
Biggs,	Harrison,	McNutt,
Brown,	Heiskell,	Moffat,
Condon,	Herold,	Moreland,
Dowling,	Holmes,	O'Sullivan,

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Rolfe,	Swing,	Tully,
Smith, of San Francisco,	Terry,	Walker, of Tuolumne,
Stedman,	Tinnin,	Wyatt—40.
Swenson,		

NOES.

Barton,	Jones,	Reddy,
Belcher,	Keyes,	Rhodes,
Blackmer,	Lampson,	Shurtleff,
Boucher,	Larue,	Smith, of Santa Clara,
Burt,	Lavigne,	Smith, of 4th District,
Chapman,	Lewis,	Soule,
Charles,	Mansfield,	Steele,
Cross,	Martin, of Santa Cruz,	Stevenson,
Davis,	McCallum,	Stuart,
Dean,	McConnell,	Turner,
Edgerton,	McCoy,	Vacquerel,
Evey,	McFarland,	Waters,
Freeman,	Morse,	Webster,
Freud,	Murphy,	Weller,
Herrington,	Nason,	Wellin,
Hilborn,	Neunaber,	West,
Huestis,	Ohleyer,	White,
Hughey,	Prouty,	Wilson, of Tehama—54.

MR. TULLY. Mr. President: I have a substitute to offer.

THE CHAIR. The Chair is of the opinion that we are still under the operation of the previous question. The question is now on agreeing with the section as reported by the Committee on Bill of Rights.

MR. FILCHER. Mr. President: I have an amendment to offer to section three.

THE CHAIR. The previous question reaches the main section.

AN APPEAL.

MR. STEDMAN. I appeal from the decision of the Chair.

Messrs. Filcher, Tully, and Blackmer seconded the appeal.

THE CHAIR. The Chair will state the question. An amendment is offered to section three. The Chair decides that the previous question having been sustained in Convention no amendments are in order; that the rule which says that the previous question shall only apply to pending amendments applies exclusively in Committee of the Whole; that under Rule Thirty-five, under the previous question, no amendments can be offered; and that the previous question reaches the main question, which is the section itself. The question is on the appeal: Shall the decision of the Chair stand as the judgment of the Convention?

MR. STEDMAN. Mr. President: In appealing from that decision I hold that Rule Thirty-five has been changed, and that the previous question now only applies to pending amendments. That rule was changed in Convention. It applies to the Convention and to the Committee of the Whole.

THE CHAIR. Will the gentleman read it.

MR. HILBORN. Mr. President: The amendment that the gentleman refers to only applies to Rule Fifty-six. I have no doubt in the world but that the Chair is exactly correct in his ruling.

THE CHAIR. The Secretary will read Rule Fifty-six as amended.

THE SECRETARY read:

"Rule No. 56. The rules of the Convention shall be observed in Committee of the Whole so far as they may be applicable, except that the ayes and noes shall not be taken, but the previous question may be moved; provided, that when the previous question is sustained, it shall only apply to the amendments then pending, and other amendments may be offered to the section."

THE CHAIR. The Secretary will read Rule Thirty-five.

THE SECRETARY read:

"RULE NO. 35—THE PREVIOUS QUESTION—HOW PUT.

"The previous question shall be put in the following form: 'Shall the main question be now put?' and all debate upon the main question shall be suspended until the previous question shall be decided. After the adoption of the previous question the sense of the Convention shall forthwith be taken: first, upon amendments reported by a committee, then upon pending amendments, and then upon the main question, without debate."

MR. McFARLAND. Mr. President: The whole question turns upon the point: What is the main question? and that resolves itself into this: whether or not a motion to adopt the section is not necessary. Now, in my judgment it is. In my judgment a section of this Constitution cannot be voted on, or cannot be adopted, except upon a direct motion to adopt. It has never been adopted at all. It is simply before the Convention for adoption, and a motion must be made to adopt it. No motion had been made to adopt it when the previous question was ordered, and the previous question, therefore, only included the motions before the Convention. We have got rid of the amendments; we have got rid of the motion to strike out, and now we have before the Convention simply this section. Now, it is necessary to have a motion to adopt the section, which motion was not made before the previous question was ordered; therefore, I think the ruling of the Chair is wrong.

MR. BARBOUR. Mr. President: I shall vote to sustain the Chair, because I believe it is correct; but I don't like it. I maintain that the main question is the original section reported by the committee—not the Committee of the Whole, but the committee on the article. That is the only main question that there is. The pending amendments, under this rule, have been disposed of, and this section is to be considered.

MR. FILCHER. Mr. President: I am one of those who appeal from the decision of the Chair. I do so on the ground that the rules under which we are acting are not the rules of the Committee of the Whole, but the rules of the Convention. The rules provide that the previous question shall only extend to the amendments under consideration; therefore, I claim that the ruling of the Chair, cutting off amendments, is not in accordance with the rule. For that reason I appeal.

MR. BLACKMER. Mr. President: I appeal from the decision of the Chair, on the ground stated by the gentleman from Sacramento, Judge McFarland.

MR. WATERS. Mr. President: I rise to a point of order. My point is, that after the previous question is ordered, debate upon points of order is not in order; that points of order and appeals are to be decided without debate. We can have no debate under the previous question, even on an appeal.

THE CHAIR. That is the very point to be decided, whether the Chair is right or not. If the Chair is right, then debate is out of order. If the Chair is wrong, then debate is in order, because it would not be under the previous question.

MR. WATERS. Could not the vote be taken without debate in that instance?

THE CHAIR. That would be assuming that the Chair was necessarily correct, which the Chair cannot assume. That is for the Convention to decide.

MR. BLACKMER. Now, sir, because the Chair assumed that the question had been ordered upon the section after we had passed upon the motion to strike out, it does not follow that this is the main question, and it is upon that ground that I appeal. I believe, with the gentleman from Sacramento, that when we pass one of these sections, it is necessary to have a motion to that effect. They are here, presented by a committee to this Convention, to act upon them, and if we are to act upon them, and the main question is to reach that point, there must be a motion to adopt the section; consequently the main question exhausted itself upon the motion to strike out. It left before the Convention the section as proposed by the Committee on Preamble and Bill of Rights, before amendment by the Committee of the Whole. Upon that ground I take the appeal.

MR. GRACE. Mr. President: These are called the Standing Rules of the Constitutional Convention of the State of California. Now we are in Convention. If these rules do not refer to this Convention, then I would like to know what they are for. Then there is another thing. We all know that there are a great many articles, or sections, that were adopted in the Committee of the Whole, that do not meet the wishes and views of a majority of this Convention. We want to discuss them and amend them. That is what we are here for. Some gentleman can send up some humbug amendment, and then the previous question is ordered, and we have got to take what we don't want. We can never get things right. If these rules only apply to the Committee of the Whole, we had better go to work and get up a set of rules to govern this Convention. I shall sustain the appeal.

MR. ANDREWS. Mr. President: In reference to the point made by the gentleman from Sacramento, I wish to read the latter part of Rule Twenty-four. I think it will satisfy the gentleman, and all others, that under the rules of this Convention every proposition must come to a vote. The latter part of Rule Twenty-four says: "Provided further, that on all resolutions and propositions relating to the Constitution, the final vote shall be taken by ayes and noes."

MR. McFARLAND. What is the final vote? It is upon the adoption of the section. How does that come up?

MR. ANDREWS. It necessarily comes up. I contend that the question now before the Convention, under the previous question, is, shall the Convention adopt section three. That is the question under the rules of the House, as provided in the latter part of Rule Twenty-four.

MR. BLACKMER. But there must be a motion.

MR. ANDREWS. Under the rules the motion comes up of itself.

MR. MURPHY. Mr. President: I move to lay the appeal upon the table.

Messrs. Stedman, McFarland, Tully, Wyatt, and Glascock demanded the ayes and noes.

THE CHAIR. The Chair will state before the vote is taken, that Rule Fifty-six, in the opinion of the Chair, is applicable only to the Committee of the Whole. "The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except that the ayes and noes shall not be taken, but the previous question may be moved; provided, that when the previous question is sustained, it shall apply only to the amendments then pending, and other amendments may be offered to the section."

That, in the opinion of the Chair, in plain words, refers exclusively to the Committee of the Whole. Then, under Rule Thirty-five: "After the adoption of the previous question, the sense of the Convention shall forthwith be taken, first, upon amendments reported by a committee, then upon pending amendments, and then upon the main question, without debate." The Chair is of the opinion that the main question is section three, as reported by the Committee on Preamble and Bill of Rights. On that proposition, under Rule Twenty-four, the ultimate question is to be taken by ayes and noes. It is whether section three shall stand as reported by the Committee on Preamble and Bill of Rights. The ayes and noes are demanded upon the motion to lay the appeal upon the table. Those voting in the affirmative will, as their names are called, say "aye;" those voting in the negative will say "no." The Secretary will call the roll.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Biggs,	Doyle,
Barbour,	Boucher,	Edgerton,
Barry,	Burt,	Evey,
Barton,	Chapman,	Freeman,
Beerstecher,	Condon,	Freud,
Belcher,	Dean,	Garvey,
Bell,	Dowling,	Gorman,

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Harrison,	Lavigne,	Smith, of Santa Clara,
Heiskell,	Lewis,	Smith, of 4th District,
Herrington,	Mansfield,	Smith, of San Francisco,
Hilborn,	Martin, of Santa Cruz,	Soule,
Holmes,	McConnell,	Steele,
Howard, of Mariposa,	McNutt,	Stevenson,
Hughey,	Moreland,	Stuart,
Hunter,	Morse,	Swing,
Jones,	Murphy,	Tinnin,
Joyce,	Nason,	Turner,
Kelley,	Neunaber,	Waters,
Keyes,	Ohleyer,	Webster,
Kleine,	O'Sullivan,	White,
Larkin,	Reddy,	Wilson, of Tehama,
Larue,	Shurtleff,	Wyatt—66.

NOES.

Ayers,	Herold,	Stedman,
Blackmer,	Huestis,	Terry,
Brown,	Lampson,	Tully,
Cross,	McCoy,	Vacquerel,
Davis,	McFarland,	Walker, of Tuolumne,
Filcher,	Prouty,	Weller,
Glascock,	Rhodes,	West—23.
Grace,	Rolfe,	

THE CHAIR. The question is on section three. The Secretary will call the roll.

The roll was called on section three, and it was adopted by the following vote:

AYES.

Barbour,	Harrison,	Nason,
Barry,	Herold,	Neunaber,
Barton,	Herrington,	Ohleyer,
Beerstecher,	Hilborn,	Reddy,
Belcher,	Huestis,	Rhodes,
Bell,	Hughey,	Shurtleff,
Blackmer,	Jones,	Smith, of Santa Clara,
Boucher,	Joyce,	Smith, of 4th District,
Burt,	Keyes,	Smith, of San Francisco,
Chapman,	Lampson,	Soule,
Condon,	Larue,	Steele,
Cross,	Lavigne,	Stevenson,
Davis,	Lewis,	Stuart,
Dean,	Mansfield,	Turner,
Dowling,	Martin, of Santa Cruz,	Vacquerel,
Doyle,	McCallum,	Waters,
Edgerton,	McConnell,	Webster,
Evey,	McCoy,	Weller,
Freeman,	McFarland,	West,
Freud,	McNutt,	White,
Gorman,	Morse,	Wilson, of Tehama—65.
Grace,	Murphy,	

NOES.

Andrews,	Howard, of Mariposa,	Rolfe,
Ayers,	Hunter,	Stedman,
Biggs,	Kelley,	Swing,
Brown,	Kleine,	Terry,
Filcher,	Larkin,	Tinnin,
Garvey,	Moreland,	Tully,
Glascock,	O'Sullivan,	Walker, of Tuolumne,
Heiskell,	Prouty,	Wyatt—25.
Holmes,		

THE CHAIR. The amendment is adopted. The Secretary will read section four.

RELIGIOUS WORSHIP.

THE SECRETARY read:

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

MR. O'SULLIVAN. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out the word 'allowed,' in the second line, between the words 'be' and 'in,' and insert the word 'guaranteed' in lieu thereof."

MR. O'SULLIVAN. Mr. President: I propose this amendment, because it is quite evident that the word "allowed" conveys the idea that the right to disallow or deny exists. Now, sir, I deny that any Government or any power on earth has a right to grant or deny freedom of religious belief. No such power exists, and where it is attempted to be enforced, it is simply despotism. Freedom of thought is inalienable. Our Government, being republican, should guarantee full liberty to the citizen in his actions. "Guarantee," therefore, is the proper word to be used in this case, because its meaning is in full accord with the genius of our institutions, which recognize the inalienable rights of all men.

MR. HERRINGTON. Mr. President: I desire to call the attention of the Chair to the fact, that when the last vote was taken the Chair stated that the amendment was adopted. Did the Chair mean that the amendment was adopted?

THE CHAIR. The Chair meant that section three was agreed to by the Convention. We were voting upon the section. The section is agreed to as reported by the Committee on Preamble and Bill of Rights. The question now is upon the adoption of the amendment to section four, offered by the gentleman from San Francisco, Mr. O'Sullivan.

The amendment was adopted, on a division, by a vote of 43 ayes to 36 noes.

THE CHAIR. The question is on the section as amended, upon which the Secretary will call the roll.

The Secretary called the first three names.

MR. ROLFE. Mr. President: I rise to a point of order. My point of order is, that it must be read twice in Convention, on two several days. It has been amended now and cannot be acted upon the same day.

THE CHAIR. The Secretary has commenced calling the roll.

MR. HILBORN. The section should be read as amended before being adopted.

THE CHAIR. The Chair is of the opinion that it is not necessary, but, by unanimous consent, it could be read now.

MR. HERRINGTON. Mr. President: Parliamentary law requires that the section should be read, with all the amendments, before it is finally put to the Convention for adoption.

THE CHAIR. The Secretary will read the section as amended.

THE SECRETARY read:

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

THE CHAIR. The Secretary will call the roll on the adoption of the section as amended.

The roll was called, and the section, as amended, adopted by the following vote:

AYES.

Andrews,	Heiskell,	Ohleyer,
Ayers,	Herold,	O'Sullivan,
Barbour,	Herrington,	Prouty,
Barton,	Hilborn,	Rhodes,
Beerstecher,	Holmes,	Rolfe,
Belcher,	Howard, of Mariposa,	Shurtleff,
Bell,	Huestis,	Smith, of Santa Clara,
Biggs,	Hunter,	Smith, of 4th District,
Blackmer,	Jones,	Smith, of San Francisco,
Boucher,	Joyce,	Soule,
Brown,	Kelly,	Stedman,
Burt,	Keyes,	Steele,
Chapman,	Kleine,	Stevenson,
Condon,	Lampson,	Stuart,
Cross,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Dowling,	Lewis,	Tinnin,
Doyle,	McCallum,	Tully,
Edgerton,	McConnell,	Vacquerel,
Evey,	McCoy,	Walker, of Tuolumne,
Filcher,	McFarland,	Waters,
Freeman,	McNutt,	Webster,
Freud,	Moreland,	Wellin,
Garvey,	Morse,	West,
Glascock,	Murphy,	White,
Gorman,	Nason,	Wilson, of Tehama,
Grace,	Neunaber,	Wyatt—82.
Harrison,		

NOES.

Mansfield,	Martin, of Santa Cruz,	Reddy—3.

NOTICE.

MR. AYERS. I give notice that on to-morrow I shall move to amend Rule Thirty-five, by striking out the words in the last two lines, "and then upon the main question."

Mr. TINNIN. Mr. President: I think the gentleman will accept this amendment which I offer.

THE SECRETARY read:

"Amend Rule Thirty-five, by striking out all after the word "amendments," in the sixth line, and insert the following words, "and other amendments may be made to the section."

MR. AYERS. I accept that.

THE CHAIR. The Secretary will read section five.

THE HABEAS CORPUS.

THE SECRETARY read:

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

MR. AYERS. Mr. President: I send up an amendment.

THE SECRETARY read:

"Substitute for the word 'privilege,' in the first line, the word 'right.'"

MR. AYERS. Mr. President: I offer that amendment for the reason that the "right" of habeas corpus should be inserted in place of "privilege," because it is a right, and not a privilege.

MR. BROWN. Mr. President: As there seems to be some attention turned to this section, I would barely state that the word "when," in the second line, appears to me to be meaningless. If the gentleman would omit that in his amendment——

MR. AYERS. It would not read right then.

MR. BROWN. You are right. It is correct as it is.

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from Los Angeles.

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The amendment was rejected.

THE CHAIR. The Secretary will call the roll on section five.

MR. AYERS. Mr. President: I offer ——

MR. BIGGS. Mr. President ——

The roll was called on section five, and it was adopted by the following vote:

AYES.

Andrews,	Herold,	Ohleyer,
Barbour,	Herrington,	O'Sullivan,
Barry,	Hilborn,	Prouty,
Barton,	Holmes,	Reddy,
Beerstecher.	Howard, of Mariposa,	Rhodes,
Belcher,	Huestis,	Rolfe,
Bell,	Hughey,	Shurtleff,
Biggs,	Hunter,	Smith, of Santa Clara,
Blackmer,	Jones,	Smith, of 4th District,
Boucher,	Joyce,	Smith, of San Francisco,
Brown,	Kelley,	Soule,
Burt,	Keyes,	Stedman,
Chapman,	Kleine,	Steele,
Charles,	Lampson,	Stevenson,
Condon,	Larkin,	Stuart,
Cross,	Larue,	Swenson,
Davis,	Lavigne,	Swing,
Dean,	Lewis,	Terry,
Dowling,	Mansfield,	Tinnin,
Doyle,	Martin, of Santa Cruz,	Tully,
Edgerton,	McCallum,	Turner,
Evey,	McConnell,	Vacquerel,
Filcher,	McFarland,	Walker, of Tuolumne,
Freeman,	McNutt,	Waters,
Freud,	Moffat,	Webster,
Garvey,	Moreland,	Weller,
Glascock,	Morse,	Wellin,
Gorman,	Murphy,	West,
Grace,	Nason,	White,
Harrison,	Neunaber,	Wilson, of Tehama,
Heiskell,		Wyatt—92.

NOES—None.

MR. BIGGS. I wanted to make a point of order.

THE CHAIR. The gentleman did not state that he rose to a point of order.

MR. BIGGS. My point of order was this, that under Rule Sixty-five all members shall vote unless excused by the Convention. I want to make that point of order.

MR. AYERS. Mr. President: I rise to offer an amendment to section five.

THE CHAIR. The Chair is of the opinion that it is too late. Section five has been agreed to.

MR. HILBORN. Mr. President: I move that we take a recess until two o'clock. The next section is the famous whipping-post section, which was got through the Committee of the Whole. I see that Mr. Campbell is not here, but he probably will be after recess. We ought to allow him to be here, and I make that motion, that we take a recess until two o'clock, when the train will arrive. I do not state positively that he will be here.

MR. TULLY. He will be here on the train, so he told me. This is a very important question.

The motion was lost, on a division, by a vote of 44 ayes to 48 noes.

THE CHAIR. The Secretary will read section six, as reported by the committee, and then section six as proposed to be amended by the Committee of the Whole.

PUNISHMENTS.

THE SECRETARY read:

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained, or confined in any jail or room where criminals are usually imprisoned.

The following amendment was reported by the Committee of the Whole:

"SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. But nothing herein contained shall be construed to prohibit the infliction of corporal punishment for crime. Witnesses shall not be unreasonably detained, or confined in any jail or room where criminals are actually imprisoned."

MR. MURPHY. Mr. President: I move to strike out, in lines four and five, the words, "but nothing herein contained shall be construed to prohibit the infliction of corporal punishment for crime."

MR. AYERS. I second the motion.

Upon the amendment the ayes and noes were demanded by Messrs. Ayers, Filcher, Shurtleff, O'Sullivan, and Murphy.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Brown,	Evey,
Ayers,	Condon,	Freud,
Barbour,	Cross,	Garvey,
Barry,	Davis,	Glascock,
Barton,	Dean,	Grace,
Bell,	Dowling,	Harrison,
Blackmer,	Edgerton,	Herold,
Herrington,	Nason,	Swenson,
Huestis,	Neunaber,	Swing,
Hunter,	O'Sullivan,	Terry,
Joyce,	Reddy,	Tully,
Kleine,	Rhodes,	Vacquerel,
Larkin,	Rolfe,	Walker, of Tuolumne,
Lavigne,	Shurtleff,	Waters,
Lewis,	Smith, of Santa Clara,	Weller,
McCallum,	Smith, of 4th District,	Wellin,
McCoy,	Smith, of San Francisco,	White,
Moffat,	Soule,	Wilson, of Tehama,
Morse,	Stedman,	Wyatt—59.
Murphy,	Stevenson,	

NOES.

Beerstecher,	Hilborn,	McConnell,
Belcher,	Holmes,	McNutt,
Biggs,	Howard, of Mariposa,	Moreland,
Boucher,	Hughey,	Ohleyer,
Burt,	Jones,	Prouty,
Chapman,	Kelley,	Steele,
Charles,	Keyes,	Stuart,
Doyle,	Lampson,	Tinnin,
Filcher,	Larue,	Turner,
Freeman,	Mansfield,	Webster,
Heiskell,	Martin, of Santa Cruz,	West—33.

THE CHAIR. The amendment is adopted.

MR. TERRY. Mr. President: I give notice that, on to-morrow, I will move to reconsider the vote by which the amendment was adopted.

MR. LEWIS. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out the words 'jail or,' in the sixth line."

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from San Joaquin, Mr. Lewis.

The amendment was adopted, on a division, by a vote of 50 ayes to 34 noes.

MR. JONES. Mr. President: I desire to give notice that I will, on to-morrow, move to reconsider the vote by which the amendment of the gentleman from San Joaquin was adopted.

THE CHAIR. Gentlemen who have given these notices are all requested to send their notices up in writing, and there will be no mistake. The question is on the substitute reported by the Committee of the Whole, as amended. The Secretary will read it as amended.

THE SECRETARY read:

"SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, or confined in any room where criminals are actually imprisoned."

MR. ROLFE. Mr. President: I rise to a point of order. It is the same point I raised before. I read Rule Forty-nine: "Every resolution proposing any alteration in the Constitution, shall be read on two several days before it is finally acted upon and adopted by the Convention." This section six has been amended some now, and before we can finally adopt it, it will have to be read on to-day, as amended, and then on some other day.

THE CHAIR. The point of order is not well taken in the pending question. The ultimate question will be on the passage of the substitute after agreeing to it. We have not yet reached the ultimate question. At that time the gentleman can make his point.

MR. WEST. I move that the further consideration of section six be postponed until to-morrow.

[Cries of "No," and great confusion.]

THE CHAIR. The question is on agreeing to the substitute.

The amendment of the Committee of the Whole as amended was adopted.

MR. WELLER. I move to strike out in section six the words "nor shall cruel or unusual punishments be inflicted."

THE CHAIR. The Chair is of the opinion that the amendment is not in order.

MR. BEERSTECHER. Mr. President: I give notice that I will move to reconsider the vote by which the section as amended was adopted.

[Cries of "Call the roll."]

MR. GRACE. Mr. President: I move that the Convention take a recess until two o'clock. It is within ten minutes of the time.

THE CHAIR. The Secretary will read the substitute as amended. This is the ultimate vote.

THE SECRETARY read the section amid great confusion.

THE CHAIR. The hour having arrived, the Convention will take a recess until two P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President pro tem. Belcher in the Chair.

Roll called, and quorum present.

RESOLUTION—COMMITTEE ON ADDRESS.

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

THE SECRETARY read:

Resolved, That the President of this Convention is hereby authorized to appoint a committee of five members of this body, whose duty it shall be to draft and publish a memorial to the people of this State, such recommendations as they may think proper in regard to the adoption of the Convention [Constitution?] formed by this body. Said memorial or recommendation to be ratified by this Convention before publication.

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MR. TERRY. Mr. President: I move that the resolution be laid upon the table.

Carried.

NOTICE.

MR. WILSON, of Tehama. Mr. President: I wish to send up a notice.

THE SECRETARY read:

"I hereby give notice, that on the twenty-eighth instant, I will move to reconsider the vote by which the Convention adopted section three, of article one, of the Constitution, as reported by the Committee on Preamble and Bill of Rights."

RECONSIDERATION.

MR. ROLFE. Mr. President: Pursuant to notice heretofore given, I now move to reconsider the vote by which the Convention last Saturday refused to adopt the amendment to Rule Twenty-four, offered by Mr. McCallum.

MR. HARRISON. I rise to a point of order. The gentleman voted in the negative, and is not entitled to make this motion.

MR. ROLFE. It will be observed that this is a motion which requires a two-third vote to carry. I voted with the losing side. There were sixty-three ayes and thirty-nine noes, and I was one of the sixty-three. It will take more than sixty-three to carry.

THE PRESIDENT pro tem. The motion is made to reconsider.

MR. McCALLUM. I wish to say, that the gentleman who makes this motion——

THE PRESIDENT pro tem. The Chair has entertained the motion. The question is upon the motion to reconsider.

MR. WATERS. Mr. President: I move that this motion be made the special order for two o'clock to-morrow afternoon. By that time, we can see whether it is necessary to amend the rule or not.

Carried.

PETITION.

MR. FILCHER. Mr. President: I wish to present a petition from citizens of Newcastle, requesting the exemption of certain property used for charitable, educational, and church property, from taxation.

THE PRESIDENT pro tem. If there is no objection, it will be received and laid on the table, to be considered with the article on revenue and taxation.

REPORT.

MR. HILBORN. Mr. President: I wish to make a report.

THE SECRETARY read:

MR. PRESIDENT: The Committee on Mileage and Contingent Expenses report back the resolution relative to the appointment of an Assistant Journal Clerk with the recommendation that it be adopted.

THE SECRETARY read the resolution:

Resolved, That the President be and he is hereby authorized to appoint an Assistant Journal Clerk for this Convention, whose salary shall be six dollars a day.

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

MR. HUESTIS. I move that the recommendation of the committee be concurred in.

MR. HILBORN. Mr. President: I will say this, that the Journal Clerk has shown to us conclusively that he will not be able to get out the Journal for to-morrow morning. Throughout the session we have we have been working most of the time in Committee of the Whole, where the roll was not called, and where the amendments offered were not recorded, hence the Journal has been very light; but now we have got back into Convention where we will have roll calls, not only upon the main propositions, but upon amendments. There are some ten or twelve to-day, and whenever there is an amendment proposed it must be reported in the Journal, and it will at once become very much larger, and it will be impossible for one man to complete the Journal in time for it to go to the printer that night. I believe, from the information we have, that it is a necessity. It has been suggested that one of the Clerks at the desk might be detailed to do it, but the work of the Clerks will be increased also, and it will be hardly fair to take a Clerk who has worked hard all day and detail him for night work. It seems to me the very best kind of economy.

MR. BARBOUR. This provides that the President shall appoint a Journal Clerk. It seems to me, if I remember rightly, the rules of this Convention provide that the Convention shall elect. I make the point that it is not in order.

The resolution was adopted.

NOTICE OF RECONSIDERATION.

MR. JONES. Mr. President: It was held by the President that motions to reconsider should be sent up in writing. I wish to send up the following notices.

THE SECRETARY read:

"I give notice that to-morrow, January twenty-eighth, I will move the Convention to reconsider the vote by which the Convention voted to strike out from line five, of section six, of declaration of rights, the words 'jail or.'"

"Also: I give notice that to-morrow, January twenty-eighth, I will move the Convention to reconsider the vote by which the Convention has to-day voted against the amendment offered by me to section two, of article on declaration of rights, viz.: to amend said section by inserting in line ——, between the words 'same' and 'whenever,' the following words: 'by proceedings in accordance with law.'"

MR. TERRY. My recollection is that the gentleman voted with the minority.

MR. JONES. I voted for the express purpose of moving a reconsideration.

MR. HILBORN. Mr. President: I rise to a point of order. I don't think that these notices of motions to reconsider an amendment that was adopted or rejected are in order. I think the only motion that can be made to reconsider is on a section that has been adopted or rejected.

THE PRESIDENT pro tem. Those are questions that will rise to-morrow when the notices are called up.

MR. HILBORN. What will be done with this?

MR. JONES. I hope the President will decide now.

THE PRESIDENT pro tem. Not being very well acquainted with this matter I have been speaking to others about it, and it strikes me that the motion ought to go to the section. But I cannot pass upon it now. The section before the Convention is section six as amended. The Secretary will call the roll.

The roll was called on section six, as amended, and it was passed by the following vote:

AYES.

Andrews,	Grace,	O'Sullivan,
Ayers,	Harrison,	Reddy,
Barbour,	Harvey,	Rhodes,
Barry,	Herold,	Rolfe,
Barton,	Herrington,	Shurtleff,
Belcher,	Hilborn,	Smith, of Santa Clara,
Bell,	Howard, of Mariposa,	Smith, of 4th District,
Biggs,	Huestis,	Smith, of San Francisco,
Blackmer,	Hughey,	Soule,
Boucher,	Hunter,	Stedman,
Brown,	Jones,	Steele,
Burt,	Joyce,	Stevenson,
Chapman,	Larkin,	Stuart,
Charles,	Lavigne,	Swenson,
Condon,	Lewis,	Swing,
Cross,	Mansfield,	Terry,
Davis,	Martin, of Santa Cruz,	Tinnin,
Dean,	McCallum,	Tully,
Dowling,	McConnell,	Vacquerel,
Doyle,	McCoy,	Walker, of Tuolumne,
Dudley, of Solano,	McNutt,	Waters,
Dunlap,	Moffatt,	Webster,
Estee,	Moreland,	Weller,
Evey,	Morse,	Wellin,
Farrell,	Murphy,	West,
Filcher,	Nason,	White,
Freud,	Nelson,	Wilson, of Tehama,
Garvey,	Neunaber,	Wyatt—86.
Gorman,	Ohleyer,	

NOES.

Caples,	Holmes,	Lampson,
Glascock,	Kelley,	Prouty,
Heiskell,	Keyes,	Turner—9.

THE PRESIDENT pro tem. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions, and in cases of misdemeanor where the punishment does not exceed six months' imprisonment or a fine of five hundred dollars, or both, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and cases of misdemeanor, the jury may consist of any number, less than twelve, that the parties may agree upon in open Court.

NOTICES.

MR. JONES. I am uncertain as to what will be the ruling of the Chair, so I will give notice that on to-morrow I will move to reconsider the vote by which section six was adopted.

MR. TERRY. Mr. President: I wish to send up a written notice.

THE SECRETARY read:

"I hereby give notice that on the twenty-eighth instant I will move to reconsider the vote by which the Convention decided to adopt section six; of article one, of the proposed Constitution."

THE PRESIDENT pro tem. The Secretary has read section seven, as adopted by the Committee of the Whole. There is nothing else before the Convention. The Clerk began to read the original section, as reported by the Committee on Preamble and Bill of Rights, and the Chair rules that the section as reported by the Committee of the Whole is the one to be read and acted upon.

MR. LARKIN. I appeal from the decision of the Chair. My ground is this: that section seven, as reported from the Committee on Bill of Rights, has never been acted upon in Convention. Section seven, as reported by the Committee of the Whole, was considered in Convention, and reported back. The section as amended is before the Convention. I hold that that is the section to read, and then the amendment proposed by the Committee of the Whole.

MR. TINNIN. Mr. President: I think in the present instance only the report of the Committee of the Whole is before the Convention. If any gentleman desires to substitute the other section it is an easy matter to offer it.

MR. WEST. Mr. President: The Convention originally appointed regular standing committees. Those committees reported to the Convention, and the Convention accepted their report, and referred these reports to the Committee of the Whole. The Committee of the Whole had under consideration these reports, and recommended substitutes therefor. The question now properly before the Convention is, shall the Convention concur in the recommendation of the Committee of the Whole? If the Convention refuses to concur in the recommendation,

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then the question comes on the original section as reported by the standing committee.

MR. ESTEE. Mr. President: This strikes me as being a very clear proposition, and the only question before the Convention now is: Shall the recommendation of the Committee of the Whole be concurred in and adopted by the Convention? This Convention resolved itself into Committee of the Whole for the purpose of such legislation, and after having acted on the reports, reported them back to the Convention with the recommendation that they be adopted by the Convention as amended. This is the usual course in legislative bodies. Now, the question before the Convention is: Shall the recommendation of the Committee of the Whole, as to section seven, be adopted by the Convention? That is the first and only proposition. But any gentleman has a perfect right, under the rules, to move an amendment. That is the privilege of any gentleman on this floor. But the original section is not before the body, because it was disposed of by the Committee of the Whole. The Committee of the Whole refused to adopt it, and did adopt another one.

MR. WEST. Can the Committee of the Whole dispose of anything.

MR. ESTEE. Yes sir, they have that right.

MR. WEST. Their action has to be passed upon in Convention, and if the Convention concurs, then that disposes of it.

MR. ESTEE. Certainly, and that is the first question—shall the action of the Committee of the Whole be adopted by the Convention, as to section seven. If it is so adopted, that disposes of it. If it is not, then it is either stricken out or amended. I appeal to any of the old members who have served in the Legislature, if that has not been the rule always. I understand that it is the rule in other bodies. If it was not, the action of the Committee of the Whole would have no binding force upon this body. This is a matter of some importance, and I think we should settle it right now. I think my friend Larkin is clearly in error.

MR. ANDREWS. Mr. President: If I understand the question correctly, it is not as stated by Mr. Estee; but the question is, whether the section, as reported by the committee, shall be read first. That is the question.

MR. ESTEE. If it was not read, then it will have to be read. I cannot say whether it has been read or not.

MR. ANDREWS. I understand the Secretary was about to read the section as reported by the committee—not the section as reported by the Committee of the Whole. The Chair ruled that he should not read that, but the amended section, as reported by the Committee of the Whole. I contend that the recommendation of the standing committee ought first to be read; then that the amended section, as reported by the Committee of the Whole, should be read.

MR. McFARLAND. Mr. President: It seems to me, sir, that the ruling of the Chair is perfectly correct. The original section seven is not before the Convention at all. This Convention appointed a Committee on Preamble and Bill of Rights, to present to this Convention their suggestions as to what should be adopted. When the Convention got hold of these reports what did they do with them? They referred them to the Committee of the Whole. The Committee of the Whole took charge of them, and they have reported them back to the Convention. Now all there is before the Convention is what the Committee of the Whole reported. They reported section seven as amended, and the original section is not before us at all. It has been disposed of by another committee. It was stricken out and an amended section reported in its place. The question, then, before the Convention is that amended section.

MR. JONES. Mr. President: I don't undertake to say what the precise effect of the step taken will be, but there was another step in the proceeding. The Committee on Bill of Rights made their report to the Convention. Now the Convention, upon the earnest solicitation of the Chairman of the Judiciary Committee, referred to the Judiciary Committee sections seven, eight, nine, thirteen, and fourteen, and that committee made a report on these sections, which will be found under date of November first, eighteen hundred and seventy-eight. Now I do not remember precisely the action that was taken on the report of the Judiciary Committee, but my recollection is that the report was adopted and substituted in lieu of the report of the Committee on Bill of Rights, as to these four sections. If we did adopt that report, that will alter the case. My impression is it was adopted.

MR. STEDMAN. I shall vote to sustain the Chair. I hold that the report of the Committee on Preamble and Bill of Rights was disposed of by the Convention when it referred it to the Committee of the Whole, and this is the report of the Committee of the Whole. I hold that the report of the Committee of the Whole is now before this Convention for action. In support of that I wish to read from Cushing's Law and Practice, paragraph two thousand and fourteen——

MR. TINNIN. I rise to a point of order. There is no appeal from the decision of the Chair.

MR. LARKIN. I wish to state the grounds of my appeal—not through any discourtesy to the Chair, but because I want the question to be settled.

THE PRESIDENT pro tem. I will state to the gentleman from Trinity that there is no second to the appeal. The Chair decides that the report of the Committee of the Whole is before the Convention for action, and that the original sections will not come up for action unless offered in the shape of amendments.

MR. LARKIN. I wish to ask you a question. Suppose we take up an amended section as reported by the Committee of the Whole, and the Convention refuses to concur in the recommendation of the committee. What is our position then? Then you will have to take the original section. This Convention may perfect the section, may it not?

MR. ESTEE. Then the original section comes up. There is no doubt about that.

MR. CAPLES. Mr. President: I confess I am heartily sick of this discussion—sick of it. If it had been proposed here how many two and three make, and should have gone into a discussion to determine what the sum total of two and three were, I should have been about equally ashamed. Now, in all reason and common sense can there be any question about what is before the Convention. Is there anybody here who can doubt what is before the Convention? Certainly there is not. The report of the Committee of the Whole is before the Convention—nothing else. Why, do you propose to set aside the amended section for the original section, which was rejected? Why, I never heard of anything so preposterous in my life. There is nothing before the Convention but what was reported by the Committee of the Whole, and everybody knows it, or ought to know it.

THE PRESIDENT pro tem. There is nothing before the body except the appeal.

MR. LARKIN. I withdraw the appeal.

THE PRESIDENT pro tem. Then the question comes on the adoption of section seven, as amended and recommended by the Committee of the Whole.

MR. HERRINGTON. Mr. President: I wish to offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'actions,' in line two, down to and including the word 'both,' in line four."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: That will make the section read, that in civil cases three fourths of the jury may render a verdict. There are a vast number of criminal actions that are less than felonies in magnitude, but equal in their disgraceful effects upon human character, and I submit that the rule that there shall be a unanimous verdict in all criminal cases should not be departed from, unless there is some stronger reason presented than was presented before the Committee of the Whole. It was argued upon that proposition, that crimes of the character of misdemeanor were not of sufficient magnitude to require a verdict in all cases to be unanimous. In criminal cases, a man's liberty is just as dear to him when considered in connection with the County Jail as with reference to the State Prison. In either case he is deprived of his liberty, and it is equally disgraceful in the eye of the law and in the sight of humanity as when he is sent to the State Prison by the unanimous verdict of a jury. Their effects are oftentimes equally destructive of character and upon society. There should not be any distinction made with reference to the punishment, when the liberty of the citizen is at stake. I do submit that this change from the old rule ought not to be made. There out to be a unanimous verdict in all criminal cases.

MR. ANDREWS. Mr. President: I offer a substitute.

THE SECRETARY read:

"SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law."

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I suppose it is unnecessary for me to say to this Convention that this is the section of the present Constitution. I do hope, sir, that the Convention will take this matter into serious consideration, and not make this innovation upon the jury system which is contemplated in the section reported by the Committee of the Whole. I am in hopes that this Convention is not prepared to try any such experiment as this, or to incorporate into the Constitution any such section as this proposed section. It is really, sir, virtually doing away with the jury system. It is a sacred system, which has been handed down to us through the wisdom of ages. If there is anything more dear to the American heart than another, it is that a man shall not be deprived of life or liberty without the unanimous verdict of twelve good men. And, sir, I do not believe that we are prepared to depart from this rule, so far as any grade of crime is concerned. I do not believe we will provide in the Constitution that any citizen of the State of California may be convicted of any crime except upon the unanimous verdict of twelve men. I believe we are ready to adopt the amendment as proposed by the gentleman from Santa Clara; but it does not go far enough. Why make the departure in relation to civil cases? Why depart from a perfect verdict? and a perfect verdict can only be obtained by having a unanimous verdict. I say, the idea of a perfect jury has been handed down to us through centuries, and that is the unanimous opinion of twelve good and true men. I would rather you would reduce the jury to six men and make their verdict unanimous, than to make the jury consist of twelve men, and allow three fourths of them to render a verdict. I wish to call your attention to the position in which we have placed ourselves. I say, it is a dangerous innovation, and one we should thoroughly consider before we adopt it. I do hope that the Constitution as it stands now will remain the Constitution of California in this regard.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I desire to correct the gentleman from Shasta. He alludes to this section as having been reported by the Committee on Preamble and Bill of Rights. Now, if the gentleman will look back and reflect, he would recollect that the first section here which some gentlemen wanted to have read, was the section reported by that committee. That section was rejected. After having discussed it for some time it was referred to the Judiciary Committee, and the Judiciary Committee took several days to consider it, and did thoroughly consider it, and reported it, after several days, to the Convention. Now, the second section seven, as read from the desk, is the section that was formulated by the Judiciary Committee, and not the section reported by the Committee on Preamble and Bill of Rights. Now, sir, in regard to the merits of the proposition, I cannot but reflect how the gentleman from Shasta, being a lawyer, could think it so necessary, so essential to the rights and liberties of the people of this State, that a man who follows

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thieving should be entitled to a verdict of a unanimous jury. But if he be a murderer, and his case comes up in the Supreme Court, why it is not necessary to have a unanimous Supreme Bench to say whether the bill of exceptions shall entitle him to a second trial or not, while the chicken thief must have a unanimous jury of twelve men—a unanimous verdict. Where is the logic of the thing? I see no sense in it, and if there is any I think the gentleman from Shasta must have a monopoly of it. This proposition was formulated by the Judiciary Committee, with a great deal of care and pains. It was a compromise measure, and having been adopted by the Committee of the Whole should receive the sanction of this body. Why not? Well, if you take the theory of the gentleman from Shasta, that a chicken thief should have a unanimous verdict, while the man whose life hangs in the scale can only have a majority of the Court—if you accept that theory, I can see where the logic comes in. But I deny that there is any reason or sense, and I maintain that the innovation, if it be such, and it is, is one that is dictated by every consideration of sound public policy. Now, let us see what the result of a unanimous verdict is. Here is a petty larceny thief, tried by a jury of twelve men. There may be one man on that jury, who, through feelings of sympathy for the prisoner, may control the other eleven. They fail to agree, and the result is he must go back to jail and wait for another trial. It may be nothing to him, because his time is of no valne; but in the meantime the taxpayers are footing the bill, to subserve no good purpose, but rather to defeat the ends of justice. I deny that there is any sense, or logic, or sound public considerations in this system. It was expected that there would be some innovations upon the old Constitution; hence this Convention was called. But, sir, if we are going to tie ourselves down by an iron-bound rule, and say we will make no innovations, then we do not need any Convention; we do not need a Legislature once in forty years. But, sir, we are not acting upon that theory. We are acting upon the theory that this country and this people are progressing, and that new emergencies are constantly arising. I hope, sir, that the amendment will be voted down, forty to one.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I am not one of those who believe in great innovations, but I am under the impression that this matter has been studied upon and thoughtfully considered and acted upon by the Committee on Preamble and Bill of Rights, and then by the Committee of the Whole. We all know that this matter of jury trials has been discussed and canvassed before the people of this State before the meeting of this Convention, and it was the impression adopted long ago that unanimous verdicts were hurtful, and did not subserve the purposes for which they were intended. After discussing this matter thoroughly in committee, and then in Committee of the Whole, I have nothing to say. I believe that no new light can be shed upon this question, and I hope the Convention will come to a vote upon it, and adopt it as it was adopted by the Committee of the Whole.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. President: It has been the habit of Judges to charge juries in all criminal prosecutions that the defendant is entitled to the benefit of all reasonable doubts. It has been a fundamental principle of criminal jurisprudence that every man charged with crime shall have the benefit of the doubt. Now you propose to not only change that system, but also to change another principle. What will be the use of the Judge charging the jury that the defendant is to have the benefit of all reasonable doubts, when, at the same time, you say that three of the jurors may doubt as much as they please—in fact, may be convinced of the entire innocence of the defendant, and yet not avail anything? That nine of them may be convinced beyond all reasonable doubt, but the other three may doubt as much as they please. In order to change the jury system you will have to change the entire common law rule of evidence, which has been sanctioned by the wisdom of centuries, that if the facts of the case are insufficient to convince the mind beyond all reasonable doubt, the defendant is entitled to an acquittal. Now, it seems to me that we ought at least to be consistent in providing for any change in the system of criminal jurisprudence. It seems to me that this change will not be applicable hereafter. Then what rule will you apply where three fourths of the jury may render a verdict? What sort of a rule will you apply? You must say first, that a preponderance of evidence is sufficient, and having said that, you say how many of them shall determine what is a preponderance of evidence. I am satisfied that we ought to allow the jury system to remain as it is. I shall therefore vote for the amendment offered by the gentleman from Shasta.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: I am in favor of the section as reported by the Committee of the Whole. It has met their approval, and I believe it is exactly right. Every lawyer recognizes this fact, that if he has a good case, he will trust to the Judge, and when he has a bad case he always wants a jury called, from the fact that he has a chance to get some one man upon the jury favorable to his side, and thereby defeat the ends of justice. I believe this amendment is clearly in the interest of the people.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: In Committee of the Whole I spoke upon this question. It seems to me that the argument to day does not meet the whole of this question. We have a law to punish the guilty, but that law is also for the purpose of protecting the innocent. We must not forget that innocent men are often accused of crime. Now, I am for the jury system as it has been. I am for that jury system because it has worked well. I am for that system because it is a perfect barrier against injustice, persecution, and oppression. One gentleman who spoke so pleasantly, Mr. Caples, said that if a chicken thief was put upon trial under this system, he must have a unanimous verdict. But when it comes to a question involving a man's property, we propose to allow a three-fourths verdict. I hope that few gentlemen on this floor have come to value property more highly than individual liberty. They don't realize that there is a great difference between taking a man's liberty away unjustly, and taking his property. We must remember that in civil cases if the jury make mistakes now there is a higher tribunal which can pass upon the mistake and correct it. But, sir, in criminal prosecutions, if the jury makes a mistake as to facts, I beg the Doctor to remember that there is no appeal, and that the mistake is without a remedy. There is no way by which a man unjustly convicted of crime, by a majority of a jury, can have the case raised again. Let us consider these matters. Let us not be too hasty about it. I believe in throwing all the safeguards we can about individual liberty. We do not know how soon this question may come home to us. Innocent men have been accused of crime in the past, and will be again. They have been placed under very adverse circumstances, and will be so placed again. I hope that the amendment proposed, which will result in saying that a man shall not be deprived of his liberty except twelve good and fair minded men are convinced of his guilt, will prevail. If a man is clearly guilty, I believe twelve men can always be convinced of the fact.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: As a general thing, all these discussions should be conducted in Committee of the Whole. I regard the pending amendment, however, of the gentleman from Santa Clara, one of such importance as to justify me in saying a few words in favor of the amendment. I submit that the proposition reported by the Committee of the Whole is grossly inconsistent in itself, in this: it makes a distinction between criminal cases. I submit to every member of this Convention, and especially to every lawyer who is familiar with criminal practice, that it will work an injustice. It is making a distinction in crimes where there is no sufficient difference. It is a distinction against the humbler class of criminals. I have little to say about the old Constitution. This jury system has come down to us for ages, as far as that is concerned. But in this age of improvements and material progress, lawyers will be far short of being even with the age, unless they can devise improvements in the system of jurisprudence. But, sir, I propose to be consistent. When you propose to make a distinction of this kind, when you propose to say that one class of criminals may be convicted by a part of the jury, while another class shall have a unanimous jury, you are making a distinction that is beneath the dignity of a Constitution. I have been unable to find such a provision, and I may safely say there is no Constitution in the civilized world where the right of trial by jury has been infringed as it is proposed here.

MR. REDDY. If a man steals forty-nine dollars, nine men may convict him; but, if he steals fifty dollars, it requires a unanimous verdict.

MR. MCCALLUM. Yes, sir; the point is well made.

MR. HILBORN. Does it not make this distinction, that one is confined in the County Jail and the other goes to State Prison?

MR. MCCALLUM. That is no answer to the objection of giving one class of crimes a different mode of trial from another. There are many cases, such as libel, where the punishment is greater than imprisonment. It may be twelve months, or it may be five thousand dollars, and yet be a case which don't blast a man's reputation in the slightest degree, and the verdict must be unanimous. But if it is for stealing forty-nine dollars and ninety-nine cents, involving the character of the man, nine out of twelve can find a verdict. The gentleman proposes to strike out certain words, which will leave the section complete. I hope we will strike out these words, and let it stand as it always has stood in this Constitution and in other Constitutions. I prefer the amendment to the old Constitution, because, in civil cases, there is no wrong to anybody. This is safe enough in criminal cases, and will save costs to the parties oftentimes.

THE PRESIDENT pro tem. The question is on the adoption of the amendment by the gentleman from Santa Clara, Mr. Herrington.

The ayes and noes were demanded by Messrs. Wyatt, Keyes, Herrington, Stedman, and Cross.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Howard, of Mariposa,	Ohleyer,
Barbour,	Hughey,	O'Sullivan,
Beerstecher,	Hunter,	Reddy,
Bell,	Jones,	Rolfe,
Condon,	Joyce,	Shurtleff,
Cross,	Keyes,	Smith, of San Francisco,
Dowling,	Kleine,	Stedman,
Doyle,	Larkin,	Swenson,
Dudley, of Solano,	Lavigne,	Swing,
Farrell,	Mansfield,	Terry,
Freud,	McCallum,	Tully,
Gorman,	McCoy,	Vacquerel,
Grace,	Moffat,	Walker, of Tuolumne,
Harrison,	Morse,	Waters,
Harvey,	Murphy,	White,
Heiskell,	Nelson,	Wilson, of Tehama,
Herold,	Neunaber,	Wyatt—52.
Herrington,		

NOES.

Ayers,	Biggs,	Burt,
Barry,	Blackmer,	Caples,
Barton,	Boucher,	Chapman,
Belcher,	Brown,	Charles,

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Davis,	Inman,	Shoemaker,
Dean,	Kelley,	Smith, of Santa Clara,
Dunlap,	Lampson,	Smith, of 4th District,
Estee,	Lewis,	Soule,
Evey,	Martin, of Santa Cruz,	Steele,
Freeman,	McComas,	Stevenson,
Garvey,	McConnell,	Stuart,
Glascock,	McFarland,	Tinnin,
Gregg,	McNutt,	Turner,
Hilborn,	Moreland,	Webster,
Hitchcock,	Nason,	Weller,
Holmes,	Prouty,	Wellin,
Huestis,	Rhodes,	West—51.

THE PRESIDENT pro tem. The question is on the adoption of the amendment of the gentleman from Shasta.

MR. SMITH, of Fourth District. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section seven so as to read as follows: 'Section 7. The right of trial shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, where the punishment does not exceed six months' imprisonment, or a fine of five hundred dollars, or both, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and in all criminal cases where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, the jury may consist of any number less than twelve that the parties may agree upon in open Court.'"

MR. SMITH, of Fourth District. Mr. President: The amendment simply fixes the words in the latter part of the section, where felony and misdemeanor appear. When this matter was up before the Committee on Judiciary, it was declared that the words misdemeanor and felony were not distinct enough, as drawing the lines between the two classes of crime, because the statutes could transpose the crimes if they saw fit. Therefore, these words, "six months' imprisonment, or five hundred dollars fine, or both," were placed in the first part of the section, and intended to be placed in other parts of the section, where the distinction is used.

MR. BARBOUR. Mr. President: I second the amendment proposed by the gentleman, because it makes it more clear and distinct. These are merely statutory crimes, and the distinction is left entirely with the Legislature. It may be that the punishment for a misdemeanor is greater than the punishment for felony, except that the party could not be sent to the State Prison. For instance, the crime of libel may be punished by a fine of five thousand dollars and imprisonment in the County Jail one year; and if the party is unable to pay the fine, he may be imprisoned seven or eight years, which is a greater punishment than is suffered for many felonies.

THE PRESIDENT pro tem. The question is on the adoption of the amendment proposed by the gentleman from Kern, Mr. Smith.

Lost.

THE PRESIDENT pro tem. The question is on the adoption of the amendment proposed by the gentleman from Shasta, Mr. Andrews.

Lost.

MR. HERRINGTON. Mr. President: I move to insert the word "in" after the word "and," in line eight.

MR. WELLER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'felony,' in line five, to the word 'law,' in line seven."

REMARKS OF MR. WELLER.

MR. WELLER. Mr. President: My reason for offering that amendment is this, that there cannot be any case tried without a jury, unless a jury is waived in open Court. The jury must be on hand, ready to try the case. The curse has been that our Police Courts and Justices' Courts have been obliged to keep a jury on hand to try these petty cases. It is a great burden to the people of the country, who are continually annoyed by being called as jurymen. It is certainly not necessary that a jury trial should be waived in open Court, in this class of small cases, such as are tried every day in our Police Courts.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: I think the amendment proposed by the gentleman is a very proper one indeed. Now, under this section, it will be impossible to transact the business in the Police Courts of San Francisco or Sacramento. In those courts there are from twenty to fifty persons for drunkenness every morning, or other misdemeanors, and every one of these men, in addition to the offenses committed against society, can inflict further damage by calling away twelve men from their vocations to hear their cases. I do not believe that there should be any iron rule here, or that these men should be obliged to have a jury whether they demand it or not.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: The gentleman from Santa Clara, and the gentleman from Solano, are both mistaken. Section three, of the present Constitution, provides that the right of trial by jury shall be secured to all, and remain inviolate forever; and that a jury may be waived by the parties in all cases, in the manner to be prescribed by law. The theory that inferior Courts and Police Courts proceed upon is, that there is a waiver of a jury in every case. There is never a jury trial in the Police Court. If a man desires to have his case passed upon by a jury, his case goes to the Superior Court.

MR. HILBORN. If we adopt this section, he will have to waive it in open Court.

MR. BEERSTECHER. That matter was fully discussed in the Judiciary Committee, of which the gentleman is a member, and we came to the conclusion there, that trials might be had in the Police Courts without the adoption of this provision.

MR. WELLER. Are you not aware that this matter was brought up at a late hour, when this section was under consideration.

MR. BEERSTECHER. "By the consent of both parties in open Court expressed." Now in every State in this Union these inferior Courts proceed in a similar manner. A person accused of crime is guaranteed the right of trial by jury, as I stated before. But the very fact that a man submits to the jurisdictions of these Courts, is taken as a waiver. If he desires a jury trial he says so, and his case goes to a Superior Court. There is no difficulty about it at all, and the section should remain as it is.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Stedman, McConnell, Davis, and Moreland.

THE PRESIDENT pro tem. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT pro tem. The question is upon the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Weller.

Lost.

THE PRESIDENT pro tem. The question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

Lost.

THE PRESIDENT pro tem. The question is upon the adoption of the section.

MR. CAPLES. I move to strike out section seven.

THE PRESIDENT pro tem. It is out of order. The Secretary will call the roll.

The roll was called on section seven as amended, and the section was passed by the following vote:

AYES.

Ayers,	Harvey,	Nason,
Barbour,	Heiskell,	Nelson,
Barry,	Herrington,	Neunaber,
Barton,	Hilborn,	Ohleyer,
Beerstecher,	Hitchcock,	O'Sullivan,
Belcher,	Holmes,	Reddy,
Bell,	Howard, of Mariposa,	Rhodes,
Biggs,	Huestis,	Rolfe,
Blackmer,	Hughey,	Shoemaker,
Boucher,	Hunter,	Shurtleff,
Brown,	Inman,	Smith, of Santa Clara,
Burt,	Jones,	Smith, of 4th District,
Chapman,	Joyce,	Smith, of San Francisco,
Charles,	Kelley,	Soule,
Condon,	Keyes,	Stedman,
Davis,	Kleine,	Steele,
Dean,	Lampson,	Stevenson,
Dowling,	Larkin,	Stuart,
Doyle,	Lavigne,	Swenson,
Dudley, of Solano,	Lewis,	Swing,
Dunlap,	Mansfield,	Terry,
Estee,	Martin, of Santa Cruz,	Tully,
Evey,	McCallum,	Vacquerel,
Farrell,	McComas,	Walker, of Tuolumne,
Filcher,	McConnell,	Waters,
Freeman,	McCoy,	Webster,
Freud,	McFarland,	Wellin,
Glascock,	McNutt,	West,
Gorman,	Moffat,	White,
Grace,	Moreland,	Wilson, of Tehama,
Harrison,	Murphy,	Wyatt—93.

NOES.

Andrews,	Cross,	Turner,
Caples,	Prouty,	Weller—6.

NOTICES OF RECONSIDERATION.

MR. BERRY. Mr. President: I give notice that I will move to reconsider the vote by which section seven was carried, whereby the Convention agreed to strike out that portion which allows three fourths of the jury to agree upon a verdict in cases of misdemeanor. I voted aye on the section, for the purpose of reconsidering.

MR. MCNUTT. Mr. President: I give notice, that to-morrow I will move to reconsider the vote by which section three, as reported by the Committee of the Whole, was rejected.

INDICTMENTS AND INFORMATIONS.

THE SECRETARY read section eight, as reported by the Committee of the Whole:

SEC. 8. Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by indictment or by information, after commitment and examination by a Magistrate, as may be prescribed by law; but a Grand Jury shall be drawn and summoned at least once a year in each county.

MR. HERRINGTON. Mr. President: I desire to offer an original section in place of that. I will draw it off, and will offer it now as a substitute.

MR. HARVEY. Mr. President: I offer an amendment.

"Amend section eight, of article one, as reported by the Committee of the Whole, by striking out all after the word 'law,' in line three of said section."

MR. HARVEY. Mr. President: I do not wish to have any particular

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debate upon this, but simply to say that it does away with the Grand Jury system in the Constitution, and leaves it entirely to the discretion of the Legislature, in the same form that it is left in the Constitution of the State of Wisconsin. The Constitution of that State says, no person shall be held to answer for a criminal offense without due process of law. In this case they would be held to answer as prescribed by law.

MR. HILBORN. Mr. President: The committee thought it was necessary to have at least one Grand Jury every year, for the purpose of examining the books and accounts of the several county officers. I think it ought not to be left to the Legislature.

MR. BEERSTECHER. This proposes to provide that the Legislature may abolish the Grand Jury entirely. I don't think that is a proper step. I think there ought to be a Grand Jury once a year, if for no other reason than to present indictments against county officers.

THE PRESIDENT pro tem. The question is on the adoption of the amendment.

Lost.

MR. HERRINGTON. Mr. President: I offer the original section of the old Constitution as a substitute.

THE SECRETARY read:

"SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia, when in actual service, and the land and naval forces, in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) unless on presentment or indictment of a Grand Jury; and, in any trial in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions.

[No second.]

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I desire to make another appeal to this Convention to stand by the compromise measures adopted in Committee of the Whole. As I remarked some time since, the Committee of the Whole referred this matter to the Judiciary Committee.

THE PRESIDENT pro tem. There is no amendment before the house.

MR. CAPLES. May I not be permitted to speak in support of the section.

[Cries of "Call the roll!" "Call the roll!"]

MR. JONES. I wish to offer section eight, as presented by the Committee on Bill of Rights, as a substitute.

THE SECRETARY read:

"SEC. 8. No person shall be held to answer for a crime, or other public offense, punishable by death or imprisonment in the State Prison (except in cases of impeachment, and in cases of militia when in actual service, and in the land and naval forces, in time of war, or which this State may keep, with the consent of Congress, in time of peace), unless on presentment or indictment of a Grand Jury. In all other cases, offenses shall be prosecuted by indictment, information, accusation, or complaint, as concurrent remedies, as may be prescribed by law. A Grand Jury shall consist of not less than fifteen nor more than eighteen persons, two thirds of whom may find an indictment or true bill. The Legislature, by a two-thirds vote of all the members elected to each House, may abolish and restore the Grand Jury system."

MR. CAPLES. Mr. President: I desire, sir, to support the section as presented by the Committee of the Whole. I desire to stand by the compromise. We discussed this matter several days in the Committee of the Whole, and being unable to come to any conclusion we referred it to the Judiciary Committee. That committee, after due deliberation, reported it back in this shape, and it was adopted by the Committee of the Whole; and I desire to know now if this Convention proposes to stand by the compromise. It does appear to me, Mr. President, that if we are ever going to recognize the fact that the taxpayers have some rights that other people are bound to respect, it is time that we now begin to assert it. This, as well as the former proposition, is looking towards economy in the administration of government, and was framed by the majority of the committee in conformity with that principle. [Applause.] Mr. President—— [Applause.] Mr. President, if the Convention does not desire to hear me, I am sure I don't desire to be heard. But I felt that it was my duty to make an appeal to this Convention to stand by its former action. As I said before, this section is the result of careful deliberation on the part of the committee. [Applause.] It was framed in the spirit of compromise, in the interest of economy, and ought to be adopted, in my judgment, by this Convention, and I hope that all amendments will be voted down and that the section will be supported as it stands. [Applause and laughter.]

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

MR. JONES. I hope the previous question will not be sustained.

THE PRESIDENT pro tem. I heard no second.

REMARKS OF MR. JONES.

MR. JONES. I will not detain this Convention long, but I wish to correct an error. Mr. Caples seems to think that this section, reported by the Judiciary Committee, was fully discussed in Committee of the Whole.

MR. CAPLES. So it was.

MR. JONES. No, sir; the only discussion was had when it was being referred to that committee, if he will recollect. [Applause.] There was a good deal of discussion upon this fifth section. [Applause.]

MR. CAPLES. I ask the gentleman a question: Were there not various amendments offered? [Applause.]

MR. STEDMAN. I rise to a point of order. With all due deference to the gentleman, I submit that the previous question has been moved. It has been seconded by a number of members in this part of the house.

THE PRESIDENT pro tem. Is it seconded?

MR. ESTEE. I second it.

MR. DUNLAP. I second it.

MR. BLACKMER. I second it.

MR. MCCONNELL. I second it.

MR. STEDMAN. I withdraw it.

MR. JONES. I think I am not mistaken in regard to the fact, being upon the Committee on Declaration of Rights, and we gave them very careful consideration. [Applause.] My recollection is very distinct, that after the sections were reported back there was no discussion of consequence. I ask the members to compare the section reported by the Judiciary Committee and that reported by the Committee on Bill of Rights, and upon such comparison, I submit, sir, that section eight, as reported by the Committee on Declaration of Rights, is more desirable to adopt on the part of this Convention than section eight as reported by the Judiciary Committee. [Applause.] I don't believe it is any member of this Convention that is making that noise. I believe the members of this Convention are all gentlemen.

THE PRESIDENT pro tem. That noise must be discontinued.

MR. JONES. I submit that if a Grand Jury is not needed oftener than once a year, it is not needed at all; and in cases of felonies, or other offenses punishable by death or imprisonment in the State Prison, need to be examined by the Grand Jury once a year, they need to be so examined every time they are brought forward. As a matter of fact, in many counties of this State a Grand Jury is not now found necessary to be called more than twice a year. In the county I represent, a Grand Jury is not called oftener than twice a year. They can be called oftener if necessary. Now, this leaves it to the Legislature to experiment in this regard. They can obey the mandates of the people, and if they find they have made a mistake, they can rectify it.

THE PRESIDENT pro tem. The question is on the adoption of the substitute.

MR. HERRINGTON. I would like to offer the section of the old Constitution. It is unnecessary to rehearse the arguments that have been made here upon this subject. [Applause, and continued stamping of feet.] I say, sir, that a system that has been tried for over eight hundred years [continued interruption, stamping of feet, and applause], and which has proved a safeguard to the rights and liberties of the people, should not be so hastily set aside. It is the safety of the people that you are sent here to guard, and not to tear down the bulwarks of freedom.

MR. ANDREWS. Mr. President: I shall not detain the Convention but a moment. It seems to me that gentleman are acting in this matter with something like improper haste, and without regard to the consideration which the importance of this subject demands. We are discussing a question here that I consider is covered by the Constitution of the United States, which provides that no man shall be tried for any infamous crime, except upon the presentation of a Grand Jury.

MR. TERRY. I will ask the gentleman if he does not know that this applied to United States Courts.

MR. ANDREWS. That is a proposition contained in the Constitution of the United States. I ask if it is not a guard that is thrown around every citizen of the United States.

MR. STEDMAN. Does the gentleman not know that they have abolished the Grand Jury in Wisconsin by a large majority.

MR. ANDREWS. That is no reason why we should adopt that provision here. It is the Constitution as it stands now, it is the Constitution as it ought to stand, and I call for the ayes and noes upon the amendment offered by the gentleman from Santa Clara.

No second.

THE PRESIDENT pro tem. The question is upon the amendment.

Lost.

THE PRESIDENT pro tem. The question is upon the adoption of the substitute offered by the gentleman from Mariposa, Mr. Jones.

The ayes and noes were demanded by Messrs. Ayers, Barton, Grace, Huestis, and West.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Harvey,	Lampson,
Barton,	Herrington,	Rhodes,
Boucher,	Howard, of Mariposa,	Stevenson,
Charles,	Huestis,	Tully,
Cross,	Hughey,	Walker, of Tuolumne,
Estee,	Hunter,	West,
Freud,	Jones,	Wyatt—22.
Grace,		

NOES.

Andrews,	Evey,	Larkin,
Barbour,	Farrell,	Lavigne,
Barry,	Filcher,	Lewis,
Beerstecher,	Freeman,	Mansfield,
Belcher,	Garvey,	Martin, of Santa Cruz,
Bell,	Glascock,	McCallum,
Biggs,	Gorman,	McComas,
Blackmer,	Gregg,	McConnell,
Brown,	Harrison,	McCoy,
Burt,	Heiskell,	McFarland,
Caples,	Herold,	Moffat,
Chapman,	Hilborn,	Moreland,
Condon,	Hitchcock,	Morse,
Davis,	Holmes,	Murphy,
Dean,	Inman,	Nason,
Dowling,	Joyce,	Nelson,
Doyle,	Kelly,	Neunaber,
Dudley, of Solano,	Keyes,	Ohleyer,
Dunlap,	Kleine,	O'Sullivan,

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Prouty,	Stedman,	Vacquerel,
Rolfe,	Steele,	Waters,
Shoemaker,	Swenson,	Webster,
Shurtleff,	Swing,	Weller,
Smith, of Santa Clara,	Terry,	Wellin,
Smith, of 4th District,	Tinnin,	White,
Smith, of San Francisco,	Turner,	Wilson, of Tehama—80.
Soule,	Tuttle,	

THE PRESIDENT pro tem. The question now is on the adoption of the section. The Secretary will call the roll.

The roll was called on section eight, and it was passed by the following vote:

AYES.

Ayers,	Harrison,	Nason,
Barbour,	Harvey,	Nelson,
Barry,	Heiskell,	Neunaber,
Barton,	Herold,	Ohleyer,
Beerstecher,	Hilborn,	O'Sullivan,
Belcher,	Hitchcock,	Prouty,
Bell,	Holmes,	Rhodes,
Biggs,	Howard, of Mariposa,	Rolfe,
Blackmer,	Huestis,	Smith, of Santa Clara,
Boucher,	Hughey,	Smith, of 4th District,
Burt,	Inman,	Smith, of San Francisco,
Caples,	Joyce,	Soule,
Chapman,	Kelley,	Stedman,
Charles,	Keyes,	Steele,
Condon,	Kleine,	Stevenson,
Davis,	Lampson,	Stuart,
Dean,	Larkin,	Swenson,
Doyle,	Lavigne,	Swing,
Dudley, of Solano,	Lewis,	Terry,
Dunlap,	Mansfield,	Tinnin,
Estee,	Martin, of Santa Cruz,	Turner,
Evey,	McCallum,	Tuttle,
Farrell,	McComas,	Vacquerel,
Filcher,	McConnell,	Waters,
Freeman,	McCoy,	Webster,
Freud,	McFarland,	Weller,
Garvey,	McNutt,	Wellin,
Glascock,	Moffat,	West,
Gorman,	Moreland,	White,
Grace,	Morse,	Wilson, of Tehama—92.
Gregg,	Murphy,	

NOES.

Andrews,	Herrington,	Tully,
Brown,	Hunter,	Walker, of Tuolumne,
Cross,	Jones,	Wyatt—10.
Dowling,		

THE PRESIDENT pro tem. The Secretary will read section nine, as reported by the Committee of the Whole.

THE SECRETARY read:

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to find a general verdict, as in other criminal cases. Indictments found or information laid for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

MR. AYERS. Mr. President: I offer an amendment to section nine.

THE SECRETARY read:

"Strike out, in lines seven and eight, the words, 'the jury shall have the right to find a general verdict as in other criminal cases,' and insert 'the jury shall have the right to determine the law and fact.'"

MR. AYERS. Mr. President: I offer that in order to restore the language of the old Constitution which was stricken out in Committee of the Whole by a very equivocal vote. I do not know whether it is necessary here to go over that question again. I hope the Convention will adopt the amendment.

MR. O'SULLIVAN. Mr. President: I shall support the amendment. The words of the old Constitution have answered very well for twenty-nine years. The freedom of the people and the freedom of the press are intimately connected; in fact, there can be no freedom without a free press. We want no hampering of the press in this free country.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: This question has been misrepresented, I don't know whether intentionally or by mistake. The argument has been put forward that in twenty-seven States of this Union the Constitutions make libel cases rest on the same basis as other criminal offenses. Now, sir, this argument is defective in one thing. These gentlemen forget, when they make that assertion, the other material fact that in those States the jury renders a general verdict. Sir, in determining what words will injure a man's reputation, the jury is fully as competent as the Judge, and far less liable to be biased. When we consider the origin of the provision we are now seeking to strike out, we can understand the animus that prompted it. It originated from a man who decided that persons in his Court were in contempt for questioning the jurisdiction of his Court. And farther, sir, when the case was appealed to the Supreme Court, his attorneys say he was right on the ground that this Convention is not a legally constituted body. I have no desire to discuss the motives which actuated that gentleman in this matter, but I have this to say: that the proceedings of that particular case show that the Judge is no more infallible than the juryman, and when we submit to a Judge of this State to say that particular words spoken of a man will or will not injure his character, we take away from the jury the very substance of the case. Experience of many years has shown that it is necessary to protect newspapers from unjust prosecutions for libel. I believe in punishing the libeler the same as I would any other offender, but, sir, I hold that the question of what constitutes a libel ought to be left to the jury and not to the Judge.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I do not propose, sir, to take up the time of this body. I am in favor of the amendment; I think it is a good one. The matter has been discussed by the newspapers of this State, and the great majority of them are in favor of that clause in the Constitution upon this subject, that the jury shall have the determination of the law and the fact. Now it is evident in this case that the jury are not likely to be under the same obligations to the newspaper that the Judge might be. And it is also evident that in many cases there might not be the same prejudice existing in the minds of the jury as in the mind of the Judge. In these times we know that Judges belong to one or the other political faith, and that their claims are advocated by certain papers, and they must necessarily feel grateful to the men who have helped them. For these reasons, Judges being only human beings, I think it is far safer to leave the law as it now stands. Leave the jury to determine the law and the fact, and not the Judge. I am under the impression that this amendment will meet with but little opposition.

THE PREVIOUS QUESTION.

MR. BARBOUR. Mr. President: Inasmuch as the two great defenders of the section to abridge the liberties of the press—Judge Fawcett and Doctor O'Donnell—are absent, I move the previous question.

Seconded by Messrs. West, Evey, Huestis, and Wyatt.

THE PRESIDENT pro tem. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT pro tem. The question is upon the adoption of the amendment proposed by the gentleman from Los Angeles, Mr. Ayers.

The ayes and noes were demanded by Messrs. Blackmer, Belcher, Huestis, Jones, and O'Sullivan.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Gorman,	Nelson,
Ayers,	Grace,	Neunaber,
Barbour,	Gregg,	Ohleyer,
Barry,	Harrison,	O'Sullivan,
Barton,	Heiskell,	Prouty,
Beerstecher,	Herold,	Reddy,
Belcher,	Herrington,	Shoemaker,
Bell,	Hilborn,	Shurtleff,
Biggs,	Holmes,	Smith, of Santa Clara,
Blackmer,	Howard, of Mariposa,	Smith, of 4th District,
Brown,	Huestis,	Smith, of San Francisco,
Burt,	Hughey,	Soule,
Chapman,	Hunter,	Stedman,
Charles,	Joyce,	Steele,
Condon,	Kelley,	Swenson,
Cross,	Keyes,	Swing,
Davis,	Kleine,	Terry,
Dowling,	Lampson,	Tinnin,
Doyle,	Larkin,	Tuttle,
Dudley, of Solano,	McCallum,	Vacquerel,
Dunlap,	McComas,	Walker, of Tuolumne,
Estee,	McConnell,	Waters,
Evey,	McCoy,	Wellin,
Farrell,	McNutt,	West,
Filcher,	Moffat,	White,
Freud,	Moreland,	Wilson, of Tehama,
Garvey,	Morse,	Wyatt—83.
Glascock,	Murphy,	

NOES.

Boucher,	Lavigne,	Stevenson,
Dean,	Lewis,	Stuart,
Freeman,	Martin, of Santa Cruz,	Tully,
Harvey,	McFarland,	Turner,
Hitchcock,	Nason,	Webster,
Inman,	Rhodes,	Weller—20.
Jones,	Rolfe,	

THE PRESIDENT pro tem. The question is on the adoption of the section as amended. The Secretary will call the roll.

The roll was called, and it was adopted by the following vote:

AYES.

Andrews,	Biggs,	Davis,
Ayers,	Blackmer,	Dean,
Barbour,	Boucher,	Dowling,
Barry,	Brown,	Doyle,
Barton,	Burt,	Dudley, of Solano,
Beerstecher,	Charles,	Dunlap,
Belcher,	Condon,	Estee,
Bell,	Cross,	Evey,

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Farrell, Filcher, Freeman, Freud, Garvey, Glascock, Gorman, Grace, Gregg, Harrison, Harvey, Heiskell, Herold, Herrington, Hilborn, Hitchcock, Holmes, Howard, of Mariposa, Huestis, Hughey, Hunter, Joyce, Kelly, Keyes, Lampson, Larkin, Lavigne, Lewis, Martin, of Santa Cruz, McCallum, McComas, McConnell, McCoy, McNutt, Moffat, Moreland, Morse, Murphy, Nason, Nelson, Neunaber, Ohleyer, Prouty, Reddy, Rhodes, Rolfe, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Steele, Stevenson, Stuart, Swenson, Swing, Terry, Tinnin, Tuttle, Vacquerel, Walker, of Tuolumne, Waters, Webster, Weller, Wellin, West, White, Wilson, of Tehama, Wyatt—95.

NOES.

Jones, Turner—2.

THE PRESIDENT pro tem. The Secretary will read section ten.

THE SECRETARY read:

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

THE PRESIDENT pro tem. If there is no amendment, the Secretary will call the roll.

The roll was called, and the section adopted by the following vote:

AYES.

Andrews, Ayers, Barbour, Barry, Barton, Beerstecher, Belcher, Bell, Biggs, Blackmer, Boucher, Brown, Burt, Charles, Condon, Cross, Davis, Dean, Dowling, Doyle, Dudley, of Solano, Dunlap, Estee, Evey, Farrell, Freeman, Freud, Garvey, Glascock, Gorman, Grace, Gregg, Harrison, Harvey, Heiskell, Herrington, Hilborn, Hitchcock, Holmes, Howard, of Mariposa, Huestis, Hughey, Hunter, Inman, Jones, Joyce, Kelley, Keyes, Kleine, Lampson, Lavigne, Lewis, Martin, of Santa Cruz, McCallum, McComas, McConnell, McCoy, McNutt, Moffat, Moreland, Morse, Murphy, Nason, Nelson, Neunaber, Ohleyer, O'Sullivan, Prouty, Reddy, Rhodes, Rolfe, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Steele, Stevenson, Stuart, Swenson, Swing, Terry, Tinnin, Tully, Turner, Tuttle, Vacquerel, Walker, of Tuolumne, Webster, Weller, Wellin, West, White, Wilson, of Tehama, Wyatt—97.

NOES—None.

THE PRESIDENT pro tem. The Secretary will read section eleven.

THE SECRETARY read:

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

MR. JONES. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by adding the words, 'except in criminal laws when a charge of libel is involved.'"

The amendment was rejected.

THE PRESIDENT pro tem. The question is on the adoption of the section. The Secretary will call the roll.

The roll was called, and the section passed by the following vote:

AYES.

Andrews, Ayers, Barbour, Barry, Barton, Beerstecher, Belcher, Bell, Biggs, Blackmer, Boucher, Brown, Burt, Caples, Chapman, Charles, Condon, Cross, Davis, Dean, Dowling, Doyle, Dudley, of Solano, Dunlap, Estee, Evey, Farrell, Freeman, Freud, Garvey, Glascock, Gorman, Grace, Gregg, Harrison, Harvey, Heiskell, Herrington, Hilborn, Hitchcock, Holmes, Howard, of Mariposa, Huestis, Hughey, Hunter, Inman, Jones, Joyce, Kelley, Keyes, Lampson, Larkin, Lavigne, Lewis, Martin, of Santa Cruz, McCallum, McComas, McConnell, McCoy, McNutt, Moffat, Moreland, Morse, Murphy, Nason, Nelson, Neunaber, Ohleyer, O'Sullivan, Prouty, Reddy, Rhodes, Rolfe, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Steele, Stevenson, Stuart, Swenson, Swing, Terry, Tinnin, Tully, Turner, Tuttle, Vacquerel, Walker, of Tuolumne, Waters, Webster, Weller, Wellin, West, White, Wilson, of Tehama, Wyatt—100.

NOES—None.

MR. TINNIN. Mr. President: I move we do now adjourn.

Lost.

NOTICE OF RECONSIDERATION.

MR. JONES. Mr. President: I wish to send up a notice.

THE SECRETARY read:

"I give notice that I will to-morrow move the Convention to reconsider the vote by which section two, of the declaration of rights, was adopted to-day."

THE PRESIDENT pro tem. The Secretary will read section twelve.

THE SECRETARY read:

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

THE PRESIDENT pro tem. The Secretary will call the roll.

The roll was called, and the section passed by the following vote:

AYES.

Andrews, Ayers, Barbour, Barry, Barton, Beerstecher, Belcher, Bell, Biggs, Blackmer, Boucher, Brown, Burt, Caples, Chapman, Charles, Condon, Cross, Davis, Dean, Dowling, Doyle, Dudley, of Solano, Dunlap, Estee, Evey, Farrell, Freud, Garvey, Glascock, Gorman, Grace, Gregg, Harrison, Harvey, Heiskell, Herold, Herrington, Hitchcock, Holmes, Howard, of Mariposa, Huestis, Hughey, Hunter, Inman, Jones, Joyce, Kelley, Keyes, Lampson, Larkin, Lavigne, Lewis, Martin, of Santa Cruz, McCallum, McComas, McConnell, McCoy, McNutt, Moffat, Moreland, Morse, Murphy, Nason, Nelson, Neunaber, Ohleyer, O'Sullivan, Prouty, Reddy, Rhodes, Rolfe, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Steele, Stevenson, Stuart, Swenson, Swing, Terry, Tinnin, Tully, Turner, Tuttle, Vacquerel, Walker, of Tuolumne, Waters, Webster, Weller, Wellin, West, White, Wilson, of Tehama, Wyatt—99.

NOES—None.

ADJOURNMENT.

MR. AYERS. I move that the Convention do now adjourn.

Carried.

And at five o'clock and ten minutes P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND TWENTY-THIRD DAY.

SACRAMENTO, Tuesday, January 28th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

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PRESENT.

Andrews,	Harvey,	O'Sullivan,
Ayers,	Heiskell,	Prouty,
Barbour,	Herold,	Pulliam,
Barry,	Herrington,	Reddy,
Barton,	Hilborn,	Reed,
Beerstecher,	Hitchcock,	Reynolds,
Belcher,	Holmes,	Rhodes,
Bell,	Howard, of Los Angeles,	Ringgold,
Biggs,	Howard, of Mariposa,	Rolfe,
Blackmer,	Huestis,	Shoemaker,
Boucher,	Hughey,	Smith, of Santa Clara,
Brown,	Hunter,	Smith, of 4th District,
Burt,	Inman,	Smith, of San Francisco,
Caples,	Jones,	Soule,
Casserly,	Joyce,	Stedman,
Chapman,	Kelley,	Steele,
Charles,	Keyes,	Stevenson,
Condon,	Kleine,	Stuart,
Cross,	Lampson,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Lavigne,	Thompson,
Dean,	Lewis,	Tinnin,
Dowling,	Mansfield,	Tully,
Doyle,	Martin, of Alameda,	Turner,
Dudley, of Solano,	Martin, of Santa Cruz,	Tuttle,
Dunlap,	McCallum,	Vacquerel,
Estee,	McComas,	Walker, of Marin,
Evey,	McConnell,	Walker, of Tuolumne,
Farrell,	McCoy,	Webster,
Filcher,	McFarland,	Weller,
Freud,	McNutt,	Wellin,
Garvey,	Mills,	West,
Glascock,	Moffat,	White,
Gorman,	Moreland,	Wilson, of Tehama,
Grace,	Morse,	Winans,
Gregg,	Nason,	Wyatt,
Hager,	Neunaber,	Mr. President.
Harrison,	Ohleyer,	

ABSENT.

Barnes,	Hale,	Porter,
Berry,	Hall,	Schell,
Boggs,	Johnson,	Schomp,
Campbell,	Kenny,	Shafter,
Cowden,	Laine,	Shurtleff,
Dudley, of San Joaquin,	Larue,	Swing,
Eagon,	Lindow,	Terry,
Edgerton,	Miller,	Townsend,
Estey,	Murphy,	Van Dyke,
Fawcett,	Nelson,	Van Voorhies,
Finney,	Noel,	Waters,
Freeman,	O'Donnell,	Wickes,
Graves,	Overton,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Larue, Schell, and Lindow.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

PETITIONS.

MR. DUDLEY, of Solano, presented the following petition, signed by a number of citizens of Solano County, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Solano County, most respectfully request your honorable body to exempt from taxation all property used exclusively for charitable, educational, and church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

Messrs. Hoge, Wilson of Tehama, Belcher, Burt, Larkin, Tully, and Reed presented similar petitions.

Laid on the table, to be considered with the article on revenue and taxation.

NEW PROPOSITION.

MR. McCALLUM. Mr. President: I ask leave to introduce a proposition, and have it read and referred to the Committee of the Whole.

THE SECRETARY read:

ARTICLE III.

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

SEC. 2. The Legislature may provide that causes submitted in a Court shall be decided within a limited time, under such conditions as may be provided by law.

MR. McCALLUM. Mr. President: I desire to say a word in explanation of that, in offering it at this time. There is no committee having charge of the subject of the distribution of powers, and I have offered this proposition to cover that omission. Section one is in the old Constitution, and I have added a new section, proposing to constitutionalize the action of the Legislature requiring Courts to decide cases within a limited time, under conditions. There is no committee to which that can properly be referred. If it is in order, I move to refer it to a Committee of the Whole. It might be printed in the Journal, but I am indifferent as to whether it is printed or not. The second proposition is as I have stated. We have a statute of the State which provides that the Courts shall decide all cases within a certain time, but it is held to be unconstitutional. This is intended to constitutionalize the action of the Legislature in that respect. I move that it be referred to the Committee of the Whole.

THE PRESIDENT. If there be no objection it is so ordered. The Chair hears none.

RECONSIDERATION.

MR. ESTEE. Mr. President: I move that the vote by which the report of the Committee of the Whole on section three of the article on preamble and bill of rights was defeated yesterday, be reconsidered. Notice was given by Mr. McNutt.

MR. TINNIN. Mr. President: I move to lay the motion on the table.

MR. ESTEE. Mr. President: I have the floor, I believe. I understand that my excitable and Democratic friend from Trinity would like to table the motion to reconsider; but, Mr. President, the question, I believe, is now before the Convention.

THE PRESIDENT. The question is on the motion to reconsider. The Secretary will read the section reported by the Committee of the Whole.

THE SECRETARY read:

"SEC. 3. That this State shall ever remain a member of the American Union; that the people thereof are a part of the American nation; that there is no right on the part of this State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union, or sever said nation, shall be resisted by the whole power of the State."

MR. TINNIN. That is not the section adopted by the Convention. The motion was to reconsider the section that passed.

THE PRESIDENT. The Chair understands that the question is to reconsider the vote by which the Convention rejected the amendment offered by the Committee of the Whole.

MR. TINNIN. I did not understand that to be the motion yesterday.

MR. ESTEE. Mr. President: When this question was before the Committee of the Whole the committee struck out section three and all the amendments that were proposed to that section. The result was that there was nothing in the preamble and bill of rights relating to our relations with the General Government. At the time it was stricken out there were three amendments pending, and each one was thus disposed of. I then, without debate on my part, proposed section three, as reported by the Committee of the Whole, and it was adopted by that committee; but on yesterday, during my absence, it was defeated, and section three was adopted as originally reported by the Committee on Preamble and Bill of Rights. Section three as originally reported by the Committee on Preamble and Bill of Rights reads as follows:

"SEC. 3. We recognize the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land."

MR. TINNIN. I rise to a point of order. I claim that the notice given by Mr. McNutt was to reconsider the vote on an amendment, and I desire the Chair to decide whether a notice of reconsideration can be given on an amendment.

THE PRESIDENT. The Chair thinks that a notice may be given. The Chair is also of the opinion that the vote taken on section three was altogether out of order. No vote is taken upon the separate sections of a report, but only upon the amendments.

MR. TINNIN. Does the Chair rule that notice can be given to reconsider an amendment?

THE PRESIDENT. The Chair will, for the information of the Convention, state what is its opinion on the entire proceeding on the report of the Committee of the Whole. I will state it now so that members can govern themselves accordingly. My understanding of the rule is this: When a report from the Committee of the Whole comes back to the Convention with amendments, the first proceeding is to read over the entire amendments adopted and recommended by the Committee of the Whole, and then to take up each amendment in its order for the action of the Convention. The question would be upon concurring with the Committee of the Whole in the amendments recommended, and it would be in order to amend the amendments, to suit the Convention, as they may think proper; and then to pass to the second amendment in the same way, and through all the amendments. After the Convention have gone through all the amendments offered by the Committee of the Whole, then it would be in order for any member to move an additional section to the article. If that is not done then it would be in order to move any amendment to any portion of the article. If that be not done, then the question arises: "Shall the article be engrossed and read a second time?" So that there is never any vote taken upon the adoption of separate sections, but the vote is taken upon the entire article as amended or prepared by the action of the Convention.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I hope the interruption will not be taken out of my ten minutes. I have no vanity about the adoption of this section as presented by me. It, however, represents three propositions which meet my approval. First, that this State shall ever remain a member of the American Union—that there shall not exist the right to secede. This is not buncombe; there is nothing political about it. I did not suppose there was any member here that would object to an expression so plain, so clear, and I think so patriotic. The next proposition is that the people "thereof are part of the American nation.' Why, sir, in the very first sentence of the Constitution of the United

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States declaration is made that "we, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America." I claim that we were a nation, that we were Americans, and that we should not be afraid anywhere or under any circumstances to enunciate that proposition. I thought that we ought to be proud of our citizenship—of our nationality. I thought we ought in some manner to express it in this solemn document, and I thought it was due to the people of the State of California that this Convention should show their allegiance to this great nation, and for that reason I placed that second proposition there. The third reads: "There is no right on the part of this State to secede." The reason this was inserted was that it has hitherto been claimed that the right—the legal right—to secede was a right the State possessed. Therefore I thought it was but fit and proper that this question should be settled in our organic law. Thus far I think that section ought to stand. The latter part of it I care nothing about. If that part of the reconsideration of the Committee of the Whole should be adopted I would move that the remaining portion be stricken out. I believe that it is fit and proper this should be done. I know that this is not intended as a red flag, thrown in the face of any one, but when the American flag is a red flag to any man, then, in my judgment, he is unworthy of American citizenship. No man is so good a Republican, so good a Democrat, or so good a Workingman, but that he can afford to adopt the first three propositions in that amendment. They are all right—all patriotic. Nor is this question anything new. We find similar provisions in many of the Constitutions of the different States of the Union, and at this time in this State, so remote from our sister States at the East, we ought to give expression to our devotion to our common country. We are told that the time will come when we will have a Pacific Republic. For one I wish to place upon record my utter abhorrence of that idea. For one I recognize my paramount allegiance to the United States, and only a secondary allegiance to the State of California. I believe this is the sentiment of a large majority of the people of our State, and I must think this section will represent the best thought and the average judgment of the people of the State and the members of this Convention. These are some of the reasons why I proposed that amendment, and why I make this motion. I hope, therefore, that the motion to reconsider the vote by which the report of the Committee of the Whole upon section three was rejected will be adopted, and that we will have an opportunity then to amend it in such a manner as will meet the wishes of the Convention and of the people of the State.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: As a member of the Workingmen's party, I wish only to state that I am in favor of this section as adopted, and have been. The Workingmen's party is in favor of it. Their platform says: "We recognize the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land." I am a man that was born and raised under the Constitution of the United States. I was raised also under the flag of the United States; and in favor of the Constitution and laws of the United States. I believe that this is the best government that was ever founded by man, and I am opposed to this doctrine that was inaugurated by the Southern Confederacy, that the government has a right to tumble to pieces. I hold that the nation is perpetual, and I cannot see why we should not, as American citizens, say this in our Constitution here, that the Constitution of the United States is the charter of our liberties. It is the bulwarks of our institutions. I am favor of sustaining it here and everywhere. I know that the Workingmen's party is in favor of it. I do not know what the Democrats and Non-Partisans are in favor of.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: When this question was up before, my recollection is, that the gentleman from San Francisco voted not to strike out that section; but whether that is so or not, I say that the principles enunciated in section three, as reported by the committee, are fully as loyal and patriotic as that proposed by the gentleman from San Francisco. I say more, sir. If we adopt the amendment offered by him, we would cast rather a stigma upon the State of California. California never did secede; never showed any disposition to secede; and she stood loyal to the government during the whole struggle. Now, sir, we intend to stand loyal. That amendment is taken from the rebel States. It has been adopted in the Constitutions of all the rebel States, and we do not want to class ourselves with those States that made that terrible foolish move of trying to secede from the Union. We want to stand where we stood, with the Northern States; and not one single Constitution in the Northern States, or the States that remained loyal to the Union, has any such amendment as that. The declaration we adopted yesterday, is full, decided, and loyal. It declares the Constitution of the United States to be the charter of our liberties, and I believe it to be a charter, although some say there are other bulwarks that would stand between us and anarchy, but I do not think so. I trust, Mr. President, that we will retain the declaration that we made yesterday, and that the amendment of the gentleman from San Francisco will not be adopted, for the very reason that it casts a stigma upon California, which she does not deserve.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I hope that no partisan feeling will induce us to either reject or adopt any particular language in reference to the Constitution of the State. I voted for the article reported by the Committee of the Whole, of which, I believe, the gentleman from the First District, Mr. Estee, was the author. When that was rejected, I also voted for the article as proposed by the Committee on Preamble and Bill of Rights, which was adopted. My judgment is, that neither article contains fitting language for the Constitution of the State of California. Section three, as adopted yesterday, because it reads as follows: "We recognize the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land." To say that it is the great charter of our liberties is, for every man who puts himself on record in favor of it, to write himself down—well, I will not use a strong phrase—as unfit to be a delegate to this Convention, because he does not know the meaning of the English language, or the meaning of the history of our country. The Constitution of the United States is not the great charter of our liberties. If there is any national paper that is sometimes called so in fourth of July orations, it is the Declaration of Independence; but as to the charter of the liberties of the people of this State, if it is proper to use the word charter at all, the Constitution of the State of California is the charter of our liberties; therefore it is not true what we have here in our Constitution. I voted for it in preference to other very foolish and remarkable propositions made here yesterday, and I am satisfied that the debate taking a partisan course has induced the Convention to do that which I will venture to say is not the deliberate judgment of twenty men on the floor of this Convention out of over one hundred members here this morning. Why, the gentleman from Placer, Mr. Filcher, took occasion to use language such as I have not heard used since the war ended. He absolutely declared, in the presence of this Convention, that the United States was not a nation! I am aware that those of the same political faith as himself claim that that was the substance of the argument of those who believed in the doctrine of secession, but I never heard one of them put it in that bold form. He said it was not a nation, because it was a republic. He had an amendment to say that it was a confederation of States, and so on. I do not believe there are ten men in the Convention that will say that the United States is not a nation. This kind of argument induced the Convention to strike out the amendment of the Committee of the Whole and then adopt the article reported by the Committee on Preamble and Bill of Rights. Now, I believe in every word of the report of the Committee of the Whole, but I submit to the gentleman from San Francisco, Mr. Estee, if this is fitting language for a State that has ever been loyal to the American Union as California has been. It is the language of a reconstructed State. It is the language of a defeated people, and not the language of a people who have been true to the Constitution and government to the end.

Now, sir, I say that this motion to reconsider, in my judgment, ought to prevail. Let us adopt some language more fitting than that we adopted yesterday. I submit to gentlemen whether it would not be satisfactory to every one to adopt the language of the Constitution of the United States, namely: that "the Constitution of the United States is the supreme law of the land." That is the language of the Constitution. I have an amendment which changes that only in one word, and it seems to me to be important. I submit it to the gentleman because some gentlemen do not like to vote for the section as reported by the Committee of the Whole. "The Constitution of the United States is the supreme law of the nation." I do not use the word "land," I use the word "nation." It covers both points.

I hope this motion to reconsider will prevail, and that we will improve that section. When an opportunity offers I propose to offer that as the language of section three. I admit that there might be no necessity to say anything upon the subject, had it not been for the discussion of the committee; but now we must say something, or put a weapon in the hands of the enemies of our work. Let us say that. It is brief; it is pointed; it covers the whole thing.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: This is a very delicate question. It is surrounded with great difficulties. The fact of the business is, sir, this is a wearisome world, and this Convention is a place where men are bothered a great deal. Now, there is no doubt in the world but what the proposition of the gentleman from San Francisco, Mr. Estee, is correct. It is correct in principle and asserts just what should be asserted. But it must be recollected that if anything of this kind was adopted, it would have a great tendency to break down this Constitution; because, sir, it is a mistake to say that the people in California are loyal. No such thing. It was shown here yesterday, by the action of this Convention, following quick upon the secession speech of the gentleman from Placer, Mr. Filcher, that perhaps a majority of this Convention are in favor of secession. If we are going to adopt the principle of loyalty there is great danger that a large number of people in the State of California, who do not believe that this is a nation, or do not believe in loyalty and constitutional government, will be induced to vote against this Constitution. Then where will we be, sir? This is a matter to be taken into serious consideration. I presume that the principle involved in this section is the most important question that ever arose in American politics—a question that has been discussed in the Legislatures of the State, and in the Congress of the United States, and has been fought out upon the battle field. That is the very question fought out in the war of the rebellion—the question whether or not this is a nation. And yet it was asserted here broadly, yesterday, that this is not a nation, asserting the very doctrine for which the southern armies fought. And yet, right upon the heels of that gentleman's speech, a majority of this Convention, rushing in the previous question, followed him.

Now, sir, my course is very plain. My purpose is to go for whatever I think is right; but it may be seen here that a majority of this Convention are not voting for what is right, but for what they think is policy. They suppose that some great aim is to be accomplished by carrying this Constitution right or wrong, and when a proposition is presented here which is supposed to lose this Constitution votes, then gentlemen go against it.

MR. AYERS. Do you consider that the delegates to the Convention are here in a representative capacity?

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MR. McFARLAND. Yes.

MR. AYERS. Should they not try to represent the views of their constituencies?

MR. McFARLAND. Represent their own.

MR. AYERS. And not the views of their people?

MR. McFARLAND. You say, be true to the people. How, sir?

MR. AYERS. By carrying out their views.

MR. McFARLAND. No, sir:

"To thine own self be true;
And it must follow, as the night the day,
Thou can'st not then be false to any man."

MR. AYERS. That is in the play.

MR. McFARLAND. This is somewhat of a play. I say the man is a moral and intellectual coward who stands upon this floor and says he will not vote for what his conscience tells him is right, because it is not popular. It is a question of popularity. A man who says he will not follow his conscience or judgment, because his constituents are against it, simply says he will not vote for what is right, because it is unpopular; and you cannot get out of it. Now, I say this proposition of the gentleman from San Francisco includes the very greatest principle and the greatest truth in American politics, and California is a part of the United States of America. I say that the most important question that ever arose in this nation, or in California, is, whether we believe we are a part of the American nation, or whether we believe that the Government of the United States is a mere temporary need of the several separate nations? I say that if we believe that the proposition here is true, it should be asserted. Now, the gentleman from Alameda says that it is only necessary and proper for certain States in this Union, who have fought for the opposite doctrine, to say that this doctrine is right. I say, that in the Constitution of Virginia, they have reiterated the same doctrine that the gentleman from Placer asserts in this Convention. I say that, although that doctrine of secession was put down by force of arms, it is still alive, and has its advocates in California and in this Convention; and when gentlemen talk to me about the people of California being loyal, and having always been so, I say it is not true, because, if General Sumner had not come to this State just as he did, this State would have gone to the Southern Confederacy, the arsenals would have been turned over to traitors, and loyal men would have been put down, until the time that the Government at home could have sent us support, and everybody knows it.

MR. CASSERLY. Mr. President: I must say that, having given a great deal of attention to the subject, I remember of nothing that warrants the gentleman in saying that the State of California would have left the Union under any circumstances.

MR. McFARLAND. Mr. President: I know that a majority of the people of the State of California, are loyal, but I know that there is a large element here that is disloyal, and that if they had the power they would have taken this State out of the Union. I know that there are able men in the State of California who have never given up the doctrine of secession, and who stand for it to-day. I am not blaming them. If they follow the dictates of their consciences, all right; but when we come here we ought to determine what is right. I make no charges against these men personally. I have no disrespect for the men who fought in the Southern army. No man's judgment is entirely infallible. Perhaps the South was right. Perhaps the doctrine of secession was the correct doctrine, and a man is a man for all that. Every man has a right to his opinions. Perhaps they were right, sir, but the question for us to determine is whether they were or not. What does this Convention think? Does this Convention think the doctrine of secession was right or wrong? If they think it was right, smooth it over the best you can. If they believe the United States is a nation, and this State a part of the nation, why not say it in the fundamental law? If the majority of the Convention believe that this is not a nation, say so. If there are men who believe this is not a nation, let them take the bold manly ground taken by the gentleman from Placer, and say whether this State is a part of this nation, or whether it is an independent sovereignty, bound together by a temporary need. Let us determine in this Constitution what is the truth. I do not claim that other men may not be right who do not agree with me. It is possibly true, sir, that this is not a nation. I do not believe it. I believe that the flag that waves over this country is the emblem of the grandest nation that the world ever saw. But if other gentlemen do not believe it, let them say so. Let us take ground one way or the other, and let us determine whether we are a part of the American nation or not, or whether there is any such thing as the American nation. If we are not, say so, and let this Convention say so. But if we believe in the doctrine that we are part of this nation let us put it in this Constitution. Therefore, I say that the question should be met, and it should not be skulked around. Let us not hide behind subterfuges.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: This seems to be a good time for making speeches for buncombe, and I do not know why I should not improve the opportunity. The gentleman from Sacramento claims that in his opinion a majority of this body is disloyal.

MR. McFARLAND. I did not say so.

MR. BARBOUR. So I understand him. He infers it, because we refuse to have the bloody shirt—that beautiful garment which has been used until it is somewhat worn out—waved at all times and in all places. I have some right to speak upon this subject. I threw down my law books and went into the fight. I do not know how many rebels I may have killed and eat, but I think perhaps as many as the gentlemen who are so fond of waving this bloody garment, and charge us now with damnable secession notions. [Applause.] We may be defenders of the great and glorious country in which we were born, but it does not follow that we must be eternally parading that bloody shirt. We are here, sir, making a Constitution for the State of California, and for the government of the people within its jurisdiction. The Federal Government is able to hoe its own row. We can neither add to nor detract from its power. Now, a few of the Southern States have inserted in their modern Constitutions a declaration of the supremacy of the Government, and that they do not propose to secede; but it is not necessary for us to assure the Government of our loyalty. It is not necessary, because, as gentlemen say, we are not bound to insert in this Constitution everything that is true. Is it necessary to put in everything that is true? If so, we should put in the Sermon on the Mount, and the Ten Commandments, if they are true. But, sir, we must confine ourselves to the duties devolved upon us. What ails gentlemen? What is the trouble here? We have inserted a full and complete declaration of allegiance, as far as it is necessary for us to go. Yes, sir, we may have gone beyond the legal and historical fact by the assertion already inserted. But, forsooth, it happens to be an exact transcript from the Workingmen's Platform. That is just what ails gentlemen. I supposed that it would be so, and that any language which has been in the mouth of that party would be so odious to them that the gentleman from San Francisco would rather sink the whole business than permit it to be incorporated in the Constitution. I hope the motion to reconsider will not prevail. We have adopted all that is necessary, and perhaps more than was necessary. Whether it be true or whether it be not true, the amendment proposed by the gentleman from San Francisco is unnecessary, and I am even willing to go with the gentleman in his argument. To the gentleman from Sacramento I have to say, that I am not now speaking a Record-Union editorial, and I am willing to admit that I am disloyal in his sense of the word. I am disloyal to the corporations, and those who would like to strike out the words "Constitution of the United States," and insert the "Charter of the Central Pacific Railroad Company." I suppose that they would be content to have it go in that way. I am loyal to the country, but I am not loyal to the Record-Union and the Central Pacific Railroad Company's charter.

MR. McCALLUM. Don't you think the language would be more appropriate to a Constitution without using that phraseology?

MR. BARBOUR. That would suit me.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: We have got into this difficulty, sir, by endeavoring to engraft some political pyrotechnics upon the fundamental law of this State. It was in bad taste. It exhibits bad history and worse law, and I regret exceedingly that an attempt has been made here to give it a party turn. Formerly I offered as a substitute for the third section, the language of the Supreme Court of the United States, which was the language of Alexander Hamilton. Now, sir, I regret, also, that the gentleman from Sacramento should have thought it his duty here, to the interests of his party, to exhibit the nether part of the bloody shirt. It seems to me that it was a wrong thing. As for myself, I have only to say that I began political life by supporting the proclamation of General Jackson, in eighteen hundred and thirty-three, against secession; that I wrote essays, in the State of Mississippi, in favor of the doctrines of the proclamation; and that subsequently, in the Legislature of Mississippi, in eighteen hundred and thirty-six, I voted for Wilbur J. Walker, who was the advocate of the doctrines of the proclamation, against George Pendegast, who was on the secession side. This is a matter of no great importance, but I may be pardoned in saying it in justification of myself. I am opposed to the third section. I hope this motion to reconsider will prevail, and that we will strike out of the Constitution everything about it. It is, from beginning to end, a miserable clap-trap. We cannot add to the Constitution of the United States; we cannot take away from it, and the Congress of the United States, and the Supreme Court of the United States would not pay the slightest attention to what we may say or declare here. It is, therefore, an idle and miserable piece of party humbug.

Now, sir, let us look at its language. The third section says—and that is the reason why I believe with my friend from Tehama, that we should reconsider the vote on the third section, which is now before this body. The gentleman from Tehama, I imagine, is as loyal as anybody here; he has borne the flag of his country in foreign war on some well fought fields. The third section declares: "We recognize the Constitution of the United States as the great charter of our liberties, and the paramount law of the land." Sir, the whole statement is true in substance and in fact. As to the palladium—I regret that the Chairman of the committee is not in his seat, because I understood him to deny the paternity of "palladium," and to impute it to my worthy friend from Monterey. Now, what is a palladium? The great American lexicographer gives it primarily as a statue of the goddess Pallas, which represented her as sitting with a pike in her right hand, and in her left, a distaff and spindle. On the preservation of this statue depended the safety of Troy. Well, I deny that it is a charter. I believe that palladium was stricken out in committee, but it shows the idea of the committee.

MR. FREUD. As a member of the committee, and as the author of that section, I will say that as it stands now so was it introduced in the committee.

MR. HOWARD. I was under the impression that palladium was in the original. I may be wrong about that, and I am very glad to learn that my young friend is the author of it, and that he goes back on that old lady. Now, sir, if it can be said in any sense that our Constitutions are the charters of our liberties, it cannot be said exclusively of the Constitution of the United States, for our constitutional government is a dual system, composed of the Constitutions of the United States and of the States. I am rather inclined to agree with the gentleman from Alameda, that the State Constitution is as much or more the charter of our liberties than the Constitution of the United States. It is, therefore, untrue when the committee says, in substance, that the Constitution of

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the United States is the exclusive charter of American liberties. It is not so, sir, and Alexander Hamilton, in one of his most brilliant numbers of the Federalist, declares that the Constitutions of the States are, more than all others, a protection to the civil liberties of the citizens. Therefore, sir, it is an extraordinary proposition to undertake to say here, in effect, that the Constitution of the United States is the exclusive charter of the American liberties. It is not true. No learned jurist ever said that is true. The Supreme Court of the United States, in three or four decisions, have repeatedly said the reverse. Why do we seek to innovate upon the great doctrines of that Court, and of all the statesmen of the country?

I hope the motion of the gentleman from San Francisco will prevail, and I hope that we shall strike out anything upon the subject in the Constitution of this State, for it has no place here. It has no meaning here, and I am opposed to it, because as it stands now it is an untruth, legally and historically.

Now, sir, in the second place, the Constitution of the United States is not the paramount law of the land except as to treaties, and Acts of Congress made in pursuance of the Constitution. It is the paramount law of the land within the sphere of the Federal Government, as Chief Justice Marshall says. It is not the paramount law of the land, nor is it valid when it goes a step beyond that sphere, and the Supreme Court of the United States has so decided in the case which I read here the other day, which decision was rendered since the close of the rebellion. The Supreme Court of the United States repudiates altogether the doctrine that the character or nature of our government was changed by the rebellion, or that the victory at Appomattox had anything to do with the fundamental principles of government. Therefore, I say, sir, that this whole thing is a miserable humbug; is a pure party claptrap without sense and without merit. It is not true. It is bad rhetoric, and if we should put it into the Constitution, some future Disraeli, who was looking up the curiosities of literature would be apt to include it in his book. It is a false quotation, so far as it assumes to be a quotation. It reminds me of a declaration of a friend of mine, a former Governor of Texas, who quoted a line from Shakspeare, and attached to it the preface, "as it is said in Holy Writ." It ran through all the newspapers in the country——

THE PRESIDENT. The gentleman's time is exhausted.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: Having been elected here as a non-partisan, I propose to carry that out to the best of my ability during this Convention, and when I see gentlemen elected upon the same ticket as myself come here and try to throw fire-brands among us and get political sections engrafted in the Constitution, I must denounce them, in unmeasured terms, as following the tricks of the demagogue. I ask no cheap notoriety. It is demagogism of the darkest dye. It is damnable, trashy stuff, and I move to lay it on the table.

MR. FILCHER. I have a right to say a word on this question.

MR. BIGGS. I withdraw that motion for the present.

REMARKS OF MR. FILCHER.

MR FILCHER. Mr. President: I would have no disposition to speak further on this matter, except that I have been placed in a somewhat peculiar light, and it may be gratifying to hear a little more from a good, strong secessionist like myself. Mr. President, I never knew, until this morning, that there was any taint of secession about me, or in the family bearing my name. Because, sir, in deference to principle and in repugnance to demagogism, I had the temerity to get up and say what I did, and speak of the bad policy of adopting such a section as was presented here, I am denounced as a secessionist, and as giving the alarm here, starting a cry at which they all want to strike out a loyal plank in the Constitution, and virtually put this Convention and the people of California on a footing with secession States. I did declare this, and I repeat it, that it is bad policy to insert in this Constitution that the American government is a nation. My reason is this: In all governments it has been the desire of ambitious statesmen and rulers to aggrandise their government by giving to it the title of nation. Others, in controvention of this idea, have ever maintained and recognized the God-given doctrine that a nation was those of one blood, and none but those of one blood, or coming from one descent, can form a nation. We have, in the city of San Francisco, a Chinese nation. We had, at one time, a Cherokee nation. I do not know to which of these the honorable gentleman from Sacramento belongs; but we have here, on the great American continent, a great American Republic, formed by the people. A republic carries with it the idea of simplicity, purity, and self-government—a very excellent idea, and an improvement on the old nation doctrine. I, for one, believe in simplicity, purity, and self-government. I believe in a government in which the people are the supreme rulers, and I understand that to be the theory of this government.

Now, I am not speaking from a partisan standpoint, except on that one point; but I say that as a rule the Republican party is considered a more aristocratic party than the Democratic party, and they have aimed to inculcate the doctrine of aristocracy in the Republic itself, and lead to centralization by calling it a nation. We all refer to it in the general sense of the National Government. It is just an idea, a custom, and is not borne out by the absolute facts. Now, sir, I would ask, though I myself might indorse the doctrine, would it be policy to flaunt it in the face of the people, and thus doubly secure the defeat of the work we are trying to perform? As to being a secessionist, those who know me would laugh at the idea. I was instrumental in my community, though not of age, in forming what we called the "Union Club," and got into it almost everybody in the community. I never dreamed of secession. If this Convention wants to declare against secession, I have no objection. Take this section reported by the Committe of the Whole: "That this State shall ever remain a member of the American Union." I do believe in the Union, compact and consolidated for the benefit of the people, and a Union which I believe there is no man on this floor would go further than myself to defend and to uphold. "That there is no right on the part of this State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union, or sever said nation, shall be resisted by the whole power of the State." There is a declaration that might satisfy anybody, and I would vote for it, and uphold it, if it was policy. It is a declaration of allegiance; it is a declaration that every man could stand up to. But I repeat, sir, that since there is a difference of opinion, since there is a question, one that goes home to the hearts of many people, about the policy of confirming this Government as a nation, I ask, is it policy to assert what a large portion of the people are yet disputing about? We are not disputing about secession. We recognize that the doctrine of secession has been settled by the arbitrament of the sword. The Union, and Union forever, is coexistent with the existence of the whole Government.

In conclusion, I would simply say that I regret that the matter was brought up in the shape it was. I regret that an opportunity has been given here for some of our friends to repeat their political speeches, and yet I hope that good will come of it. Unless something better than this can be had, I would be in favor of striking out the whole thing. We can not add one jot or tittle to the Federal Constitution. We cannot make the State loyal by declaring so; nor disloyal by declaring to the contrary. It is but buncombe at the best. The section as finally passed I do not like.

THE PRESIDENT. Time.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I am in favor of the amendment as agreed upon in the Committee of the Whole; therefore, I hope that the Convention will reconsider this vote, and that we will be permitted again to vote upon the amendment as recommended by the Committee of the Whole to this Convention. Permit me to say that I feel it is unfortunate in this stage of our proceedings that this question has been broached in the manner in which it has—in a political, partisan sense. I believe it was a mistake, perhaps inadvertently made by my good friend, Mr. Filcher, whose patriotism I indorse, when he said that no Democrat, as such, could indorse the principles of section three as recommended by the Committee of the Whole. It pained me when that declaration was made, and I knew very well then that it would excite the partisan feeling, and perhaps give rise to unpleasant words. I am one of those who fought this bloody rebellion through, and there is not a gentleman on this floor that feels more toleration, or will bridge the chasm with a better grace than I will to-day. I believe that those who fought on both sides will unite with me in saying that the issues which we fought over then and there should be buried forever. But while we may be guided in the future by the lamp of experience, and while I favor burying those issues in the past, there is no gentleman who will pretend to say that this nation—and I use the word nation in its broadest sense—will never be invaded, and its perpetuity and existence threatened by the same spirit that it was in the late war. Questions that were fought over there are now settled, but however clear our horizon may be to-day, there may be clouds in the future. There are clouds that threaten us, but not from the same source; and those gentlemen, be they Democrats or whatever else they are, should unite in saying that this State never can secede.

I do not claim that the perpetuity of this government will ever be assailed from the same source as before, but it may be that among the political factions that spring up every day, the right of secession may be claimed, and the right to defend themselves against imaginary wrongs, that they think they have suffered at the hands of the General Government, and you will have a Mexico here in the United States. I hope that the American people, and the people of California, will once and for all assert in their organic law, that secession is no remedy for any of the evils that exist in our governmental structure; that the Constitution of the United States, and the Constitution of the State of California, will provide the constitutional, legal means for the redress of all grievances which in fact exist, or which may be imagined by the citizens of this State; and that all proclamations of independence against any governmental power in the United States shall be forever discountenanced and put down. I plead for this. I ask for it, feeling and knowing what this country has suffered by the too loose and too careless consideration of the relations of the States to the nation. Now, Mr. President, I believe that every lover of his country, I believe that all here, will unite upon the necessity of this. They may say that these are glittering generalities, but we have seen the time when these words meant something. If we believe that this State is a part of the American Union, let us say so. It matters not particularly whether it is in the language of the gentleman from Placer, Mr. Filcher; of the gentleman from Alameda, Mr. McCallum; or of the amendment offered by the Committee of the Whole. I care not for the language so long as the substance is there. I cannot be satisfied as a citizen of the State, and the people of this State will not be satisfied, if we fail to insert in the new Constitution, that this State is a part of the American nation.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: I presume that I am one of the parties at least, that the gentleman from Sacramento, Judge McFarland, alludes to as secessionist, because I saw fit to vote contrary to his ideas on yesterday. Now I mean to say, that I do not think anybody who knows me will deny the fact, that so far as my politics is concerned, I always speak saying, and vote just what I think. I believe that the Constitution of the United States, in one sense of the word, is the supreme law of the land. I think if anything was established in that conflict, that that proposition was established; and I sent up to the desk yesterday an amendment to that effect, but failed to get it in: That we recognized

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the Constitution of the United States of America as the supreme law of the land.

MR. MCCALLUM. Don't you think it would read better this way: "The Constitution of the United States is the supreme law of the land?"

MR. TULLY. Yes. I am willing to vote for that. I am sorry that this discussion has sprung up. I am sorry that any gentleman should have thought fit to introduce it. Matters here should be discussed with a clear and cool head, without regard to partisanship, and without regard to the effect that any vote may have upon the coming political campaign. Now, the gentleman from Sacramento—and I am sorry that he is not in his seat, because he generally makes it convenient to dodge all castigations, [laughter]—said that the man who would not vote for what he conscienciously believed to be right, was a moral coward. I concur with the gentleman in that proposition, and we have some evidence of it on the libel question. On one occasion we had seventy-four noes and yesterday seventeen. They fell down in this Convention like camels in a sand storm. I pity, from my heart, the man who has not the moral courage to say and vote as he thinks is right. But if there is one man that I pity more than a moral coward, it is a political humbug, [laughter]—a political demagogue, sir—a man who will try to cover up his shortcomings in this Convention, and the many outrages that he has committed upon the rights of the people, by appealing to the prejudices, as he has, of a large number of gentlemen who are here. He seeks to so blind their intellects, and rouse so much partisan prejudice, that they will forget the purposes for which they are called here, and blindly follow his dictation. He is like a cuttle fish, sir, that pours forth a dark fluid to color the water behind him that he may escape from his enemies. He wishes to blind us that he may escape his shortcomings. Mr. President, I believe that is all I have to say upon the subject. I merely wish to set myself right upon the subject. Perhaps I might add one other word to Mr. West. He says he entertains no hard feelings against us. We are all pretty good fellows, and if we all just do right in his way we will all got along harmonious. So far as the Constitution of the United States being the charter of our liberties, that is a falsehood. It would simply be a declaration of a lie. No human being that lives on the earth enjoys a single liberty or a single right that he derives from the Federal Constitution, as an original source. There is not a respectable authority in America, there is not a decision of a Court, nor a respectable writer on law, nor a gentleman who stands high in the jurisprudence of the country, that has ever or ever will maintain such a proposition, because it is subversive of the common sense views of the country. Now, I despise all this claptrap, and I hope this vote to reconsider will prevail, and that we will put in the amendment of the gentleman from Alameda, that the Constitution of the United States is the supreme law of the land.

MR. BARRY. Mr. President: I believe that these matters were fully settled at the Appomatox Court House several years ago, and I do not think it is the time now to open the question. I believe every gentleman has sufficiently made up his mind, and I therefore move the previous question.

Seconded by Messrs. Dean, Tully, Waters, and Smith of Santa Clara.

MR. HOWARD. I hope that motion will not be carried.

The main question was ordered, on a division, by a vote of 64 ayes to 37 noes.

MR. HOWARD. I demand the ayes and noes.

Messrs. Shoemaker, Freud, and Herrington also demand the ayes and noes.

MR. WEST. Will it cut off amendments?

THE PRESIDENT. It only applies to the motion to reconsider.

The roll was called, and the previous question ordered by the following vote:

AYES.

Barbour,	Harvey,	Nelson,
Barry,	Herold,	Neunaber,
Barton,	Hitchcock,	Ohleyer,
Belcher,	Heustis,	Prouty,
Bell,	Hunter,	Rhodes,
Biggs,	Inman,	Rolf,
Blackmer,	Jones,	Smith, of Santa Clara,
Burt,	Kelley,	Smith, of 4th District,
Charles,	Keyes,	Smith, of San Francisco,
Cross,	Lampson,	Stedman,
Crouch,	Larkin,	Stuart,
Davis,	Lavigne,	Sweasey,
Dean,	Lewis,	Swenson,
Doyle,	Mansfield,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Tully,
Evey,	McCallum,	Tuttle,
Freeman,	McComas,	Vacquerel,
Freud,	McCoy,	Waters,
Garvey,	Mills,	Webster,
Glascock,	Moffat,	Wellin,
Gorman,	Moreland,	West,
Gregg,	Morse,	White,
Harrison,	Nason,	Wyatt—69.

NOES.

Andrews,	Dudley, of Solano,	Holmes,
Ayers,	Estee,	Howard, of Los Angeles,
Beerstecher,	Farrell,	Howard, of Mariposa,
Boucher,	Filcher,	Hughey,
Brown,	Grace,	Joyce,
Caples,	Hager,	Martin, of Alameda,
Chapman,	Heiskell,	McConnell,
Condon,	Herrington,	McFarland,
Dowling,	Hilborn,	McNutt,
Murphy,	Ringgold,	Thompson,
O'Sullivan,	Shoemaker,	Turner,
Pulliam,	Shurtleff,	Walker, of Tuolumne,
Reddy,	Soule,	Wilson, of Tehama,
Reed,	Steele,	Winans,
Reynolds,	Stevenson,	Mr. President—45.

Upon the motion of Mr. Estee to reconsider, the ayes and noes were demanded by Messrs. Wyatt, Dean, O'Sullivan, Condon, and Joyce.

The roll was called, and the motion prevailed by the following vote:

AYES.

Ayers,	Hilborn,	Reynolds,
Belcher,	Holmes,	Rhodes,
Blackmer,	Howard, of Los Angeles,	Rolfe,
Boucher,	Howard, of Mariposa,	Shoemaker,
Burt,	Huestis,	Shurtleff,
Caples,	Jones,	Smith, of 4th District,
Casserly,	Lampson,	Soule,
Chapman,	Lewis,	Stedman,
Charles,	Mansfield,	Steele,
Crouch,	Martin, of Alameda,	Stevenson,
Dean,	Martin, of Santa Cruz,	Stuart,
Dowling,	McCallum,	Sweasey,
Dudley, of Solano,	McConnell,	Swing,
Dunlap,	McFarland,	Thompson,
Estee,	McNutt,	Tully,
Evey,	Mills,	Turner,
Filcher,	Morse,	Vacquerel,
Garvey,	Nason,	Walker, of Tuolumne,
Gregg,	Neunaber,	Webster,
Hager,	Ohleyer,	West,
Harvey,	Pulliam,	Wilson, of Tehama—65.
Heiskell,	Reed,	

NOES.

Andrews,	Harrison,	Nelson,
Barbour,	Herold,	O'Sullivan,
Barry,	Herrington,	Prouty,
Barton,	Hitchcock,	Reddy,
Beerstecher,	Hughey,	Ringgold,
Bell,	Hunter,	Smith, of Santa Clara,
Biggs,	Inman,	Smith, of San Francisco,
Brown,	Joyce,	Swenson,
Condon,	Kelley,	Tinnin,
Cross,	Keyes,	Tuttle,
Davis,	Kleine,	Walker, of Marin,
Doyle,	Larkin,	Waters,
Farrell,	Lavigne,	Weller,
Freeman,	McComas,	Wellin,
Freud,	McCoy,	White,
Glascock,	Moffat,	Winans,
Gorman,	Moreland,	Wyatt,
Grace,	Murphy,	Mr. President—54.

MR. MCCALLUM. Mr. President: I offer an amendment to the section.

THE SECRETARY read:

"Amend section three by striking out all after the figure '3,' and inserting as follows: 'The Constitution of the United States is the supreme law of the land.'"

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. President: The controversy which has been debated this morning seems to me, with all due respect to my colleagues in this Convention, very much an affair of fighting shadows. It seems to me as if the question was whether we are a nation, or a people. Now, in regard to the use of the word nation it is certainly significant, if not remarkable, that in the Constitution of the United States under which we now live, the word "nation" is nowhere to be found. It is always the American people, or the people of the United States. The word Union is found as representing that indissoluble partnership between the States of the Union united under one head, that head being the General Government. It seems to me, therefore, that the whole question resolves itself very much into a matter of fancy whether the word nation ought to be used, or the word people. Besides the hated and very significant omission of the word "nation" in any part of the Constitution of the United States there is this further to be offered, that the common use of the word nation is not applied to countries like our own. The common use of language is that we say the French people, the English people, or the German people, but we do not say the French nation, the English nation, or the Spanish nation. The good old Anglo-Saxon word people is the word which was selected by choice and by intention, by the makers of our Constitution and the makers of our form of government; and certainly, if I was disposed to press the etymological signification, I should oppose the use of the word nation. But for myself I would not quarrel one moment with any member of this Convention whether the word nation was used, or the word people. What I have said I have endeavored to say for the purpose of justifying such of our friends as prefer to adhere to the word people rather than give way to, and adopt the word nation. I think, sir, that what George Washington and that illustrious galaxy of men of whom he was the central figure, thought fit to eschew, we can get along without, that is the use of the word nation, substituting for it the word people, to my mind a grander idea than the word nation, because composed of several different nationalities and several different races. When you speak of the word people, you speak of a great and powerful people raising the structure of whose government we see from day to day. Let us not fall

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out by the way. We are all, I trust, equally devoted to the glory and the power, and the firmness of this grandest structure of ancient and modern times, known in popular language as the American Union; known also in Courts of law as the American law. Now, sir, if we do not wish to adopt the word nation, which I will admit is a very grand word, why not take the word people. And if the word people be objectionable, why, let the gentlemen who differ from me upon this floor present a better one. But what I object to with some feeling, I must admit, is the manifest and most unfair and improper effort made by certain gentlemen upon this floor, to make a division among men who are not divided in point of loyalty, or in their love for the doctrine that this is one of the permanent governments of this world, as long as this globe shall last. I repudiate with scorn, and I had almost said with contempt—but that word is not parliamentary and I withdraw it—I repudiate and defy the efforts, from whatever source, to put upon any considerable number of men in this Convention the brand of secession. We have had enough and too much of divisions in this country. Who is it, sir, that proposes to bring back here into this body the terrible feud which drenched this land with blood, which left us the corpses of a million or more of brave men who fought on each side. I ask not to know who was in the right, or who was in the wrong, but what I demand from every man here, is that whatever was best, proudest, and bravest in the way of self denial and heroism on either side shall be remembered, and that all else shall be sunk deeper than the tomb of oblivion ever sunk it. [Applause.]

REMARKS OF MR. WELLER.

MR. WELLER. Mr. President: I have an amendment that I drew when this first one was drawn, that I like a little better than the one that is now up for consideration. It reads: "Every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State in contravention or for the subversion thereof can have any binding force." Our Government is known as the United States of America, and as the United States, and when we say that every citizen owes paramount allegiance to the Constitution and Government of the United States, we say all that we can say in regard to the people of this State; and that no law or ordinance of this State in contravention or subversion thereof can have any binding force. It seems to me, if anything is expected of us in this Constitution to express our allegiance to that Government, it can be expressed in that many words, and with as much effect as we can express it at all. I would therefore offer the amendment.

THE PRESIDENT. There is an amendment to an amendment pending already. The amendment is not in order.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: I rise merely to say a few words in reply to the radical argument of the gentleman from Los Angeles, General Howard. I, sir, recollect that speech. I think I heard it twenty-five or thirty years ago. But I call the attention of the gentleman to the fact that the cases he has cited have been overruled by a more recent case—the case that was alluded to by the gentleman from Marin, Judge Shafter—the case of Grant vs. Lee, decided at Appomattox, in April, eighteen hundred and sixty-five. This decision is written in blood. There never has been a new trial asked for. There never will be one granted. There never was an appeal in that case, because the decision was rendered in the highest Court that ever set upon the American soil. It was an appeal to the God of Battle, and that judgment is written in blood, and will stand forever. That is all.

MR. HOWARD. Since that decision, the Supreme Court of the United States has overruled Chief Justice Grant by deciding clearly and squarely, twice, that the Constitution of the United States since the rebellion remained unimpaired, and that the principles of the Government were still in full force as they were before.

MR. HILBORN. The American people will see that this decision is not overturned, and they will see that the Supreme Court of the United States shall never fritter it away.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I do not feel inclined to say a great deal upon the subject as to whether we should be considered a people or a nation. We are all here in favor of progress, but in some cases I am under the impression there is danger of going a little too rapidly, and I am under the impression that in certain cases the expressive and sensible terms of the fathers are preferable to those which are brought up at present. I agree with the gentleman from San Francisco, Mr. Casserly, upon this subject, that there is something grand and excellent, and that there is something of principle connected with the idea conveyed when speaking of the people of the United States—calling them a people. I am opposed to attempting much in the line of improvements. I was opposed to the section three that was adopted yesterday in Convention; but I voted for it in preference to other amendments, because I thought it better. I am now under the impression that there is an amendment that was attempted to be got before the Convention yesterday, but did not succeed, that is better. It expresses the idea more completely. It is this: "The Constitution of the United States is the supreme law of the land." We are convinced that this is in accordance with the relationship existing between the States and the United States. I am well aware that any language may be found objectionable in part. The State possesses certain rights that we all wish to hold, otherwise we would not be here in Convention at this time. There are rights which were not given over to the United States, and which are guaranteed to us as a State in that instrument. Therefore, we are here as a Constitutional Convention at this time, in order to make such laws—provided the same shall be adopted—as may suit the interests of this people; to make a fundamental law for this purpose. I shall be entirely in favor of the amendment of the gentleman from Alameda, Mr. McCallum, which amendment is: "The Constitution of the United States is the supreme law of the land."

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I took some part in moving to reconsider this matter. I asked Mr. McNutt to give the notice yesterday, for the purpose of bringing this up for the consideration of the Convention. I did it because I believed the adoption of section three as originally reported by the committee was not right. It did not meet my favor, nor do I think it meets the favor of one tenth of the members of this Convention. I agree most heartily with those gentlemen who say that the Constitution is not the charter of our liberties, but that it is the supreme law of the land. I think it was wise to reconsider the vote of yesterday, and I think it would be wise to now adopt at least a portion of section three as reported by the Committee of the Whole. I have not changed my mind from the first on this question. Now, Mr. President, there have been some references made to the political questions involved, or which are claimed to be involved, in this amendment. Some have claimed that this section was presented for buncombe. So far as I am concerned, I am willing to face all such charges. I have made no personal allusions, and have none to make. I know that there are different opinions in this Convention on this subject, but I cannot but believe there ought not to be. I do not criticise any member for his action on this or any other subject. I am here trying to do my best to have some recognition of our name, nation, and political character, inserted in this Constitution. I am not here for the purpose of talking buncombe or doing buncombe, and I do not assume that you are. I did believe that it would be unwise, or even extraordinary, for the Constitutional Convention of California to pass by this subject and make no allusion to our relations with the General Government, and for one, with a due regard for the opinions of others, I desired to insert something in this Constitution that would show both our allegiance to the General Government and our disclaimer of any right of secession. If this is flaunting the bloody flag in any gentleman's face, then I have to say that he is too sensitive to be patriotic. I did not think there was anything wrong in expressing broad, patriotic, national sentiments. I do not think it ought to offend any true American citizen, to assert in any manner or form that this is a nation. I do not doubt the sincerity of those who fought against our country, but only those who talk against it. I know men never risk their lives for a cause they do not believe in. I always did detest their doctrines, and never could believe they were right. I therefore made the attempt to put such provisions in this Constitution as should forever set at rest these questions. I wish to say it shall not be legal to secede. I know it can be done by revolution. I remember well, in this city, many years ago, a political Convention declared that the right of secession was an inherent legal right, reserved to the States under the Constitution and laws of the United States. I did not believe it then; I do not believe it now. For one, I am willing to assume all the responsibility of putting a clause into the Constitution declaring that now and hereafter it shall be unlawful to secede from the American Union. Now, sir, if this is flaunting the bloody flag, if it is offending the sensibilities of any gentleman on this floor, I am sorry for him. I am sorry that he is so sensitive upon a question which should be so near his heart. Now, Mr. President, and gentlemen of the Convention, I hope that an opportunity will be presented to amend section three as reported by the Committee of the Whole, so that it will convey that idea, so that California will march in the line of those States that have declared that it is against the settled policy of our Government to secede from the Union. The people of this State, regardless of party, ought to make this expression, for I deny that there is any party in this question, unless the gentlemen make it so. This Constitution, if adopted, shall be a declaration of principles for the people and not for a party. Democrats, Republicans, and Workingmen may, if they will unite upon one common platform, and that platform shall be a broad national one. I hold that we ought all to be willing to stand upon that principle; and if there is partisanship, gentlemen of the Convention, with all due respect to your feelings, those of you who differ will have to make the most of it, for they are my honest convictions.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. I would suggest to the gentleman from San Francisco that he insert, in lieu of the amendment he has proposed, the words: "The flag of our country, the Union forever."

[Laughter.]

MR. ESTEE. That would be a very good amendment, probably.

MR. HERRINGTON. I am in favor of it. I would just as soon it was there as the proposition which is introduced by the gentleman and proposed to be engrafted upon the Constitution. The two are parallel precisely. If I say that I am white, this Convention would think that I was about to stultify myself.

MR. TULLY. I don't know about it.

MR. HERRINGTON. That is the question you are arguing now, and the dispute would be about the same. The proposition is that we are a part of the American nation.

MR. MCFARLAND. It has been doubted on this floor. It has been said that we are not a part of the American nation, or that it was not a nation.

MR. HERRINGTON. The boy, when he thought it was hardly discernable whether his picture was a horse or not, wrote directly underneath: "This is a horse." Everybody could see it. The gentleman from San Francisco desires to write in this instrument, we are a part of the American nation. Who ever doubted that proposition? It is sought by the power of a stream of eloquence to insert it in the Constitution that we are a part of the American nation; just as if that could make the fact any stronger. We are a part of the American nation, and I do not think that the question is debatable, therefore I do not

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think it needs assertion. It stands self-evident. In every instance where we elect an officer we require that he shall acknowledge his allegiance, by taking an oath before Almighty God, and in the presence of a Judge, to support the Constitution of the United States.

MR. TULLY. Does he swear allegiance to the American nation?

MR. HERRINGTON. No, sir. I am talking of allegiance to the Government, and if you have any ears to hear, sit still and hear.

MR. TULLY. Is there any reference to the American nation?

MR. HERRINGTON. I am not talking of the American nation only in the sense that it is offered in this resolution, and if you sit still you will hear more than you know now. Some gentleman stands in his place upon this floor and says that this is not the great charter of our liberties, and the gentleman from San Francisco says that it is meaningless humbug when we attempt to assert in the Constitution that we recognize the Constitution of the United States of America as the great charter of our liberties. Now, what is a charter? Was there any such thing as a republican form of government prior to the inauguration of the Government of the United States of America? What liberty have you got except that which is regulated by law? And if that was not the inauguration of that liberty which was established under republican forms, in God's name, what is it? If that is not the charter of your republican liberties to-day, where is that charter? I do not know of any other law which says that Congress shall guarantee to every State a republican form of government. If that is not the charter, if that is not the issuance of an authority to the government to go forth, if that is not the charter of your liberties, where is the charter? You have no other liberties except those guaranteed under republican forms, and these are the liberties which are chartered liberties, and you have none other to-day; and if this is not your charter of liberties, where is your charter? The great people of the United States made the charter. "We, the people of the United States." I acknowledge no other authority for this charter. This is simply what you are called upon to recognize. Some gentleman says it has no sense in it. Was it not the foundation upon which our liberties arose? Any other liberty than that which is guaranteed by that instrument is license, and beyond law. There are certain other views about this proposition which I would like to refer to, if the time permitted. This proposition of the gentleman from San Francisco is but a glittering generality, and embraces no principle in it whatever—certainly none that the people of the United States have not called upon this State to recognize. The other is a matter of obligation upon which we are all sworn, and to which we all should admit allegiance—every one of us—and we should do it when we go to the ballot box. We should submit it in the Constitution, so that every man, when he votes, shall assert his allegiance to the Constitution of the United States.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: I will express my views on this proposition from my own standpoint. I have a substitute for the section, and it reads as follows:

"The Constitution of this State is the supreme law of California, and we the people of California recognize the Constitution of the United States as the supreme law of the American Union; and we declare this State an integral part of the United States of America."

I believe that first of all I owe my allegiance to my adopted State, as long as that State remains in the great family of the American States, I will bow to the will of the majority. I do not believe that a minority of the States have a right to secede, and I hope I never will see them secede. I acknowledge the Constitution as the supreme law of the Union; but, sir, the Constitution was adopted when an immense country lay uncultivated; when it was overrun by Indian tribes; when it was open to immigration from Europe; because, sir, the founders of that Constitution never dreamed of China then. But, sir, westward the star of empire takes its way. The States have come to the borders of the Pacific Ocean. Here we are without anything to shelter us from the immense hordes of Asiatic slaves that are willing and ready to come into our midst. It was never dreamed by the founders of the great Constitution of America that we would be here without a mantle to protect us from the incubus under which we are at present suffering. When the Constitution of the United States interferes with our liberties, with our rights as American citizens, we should not respect this mandate. But, sir, I know, and I accept the doctrine, that under the Constitution of the United States it is not lawful to bring serfs and slaves into California. Under the Constitution of the United States we would be protected in all our rights; and, therefore, I am willing to accept it as the great paramount law of the land. Now, sir, what did we see in eighteen hundred and forty-eight, when Abraham Lincoln, that immortal patriot, whose name will live forever, said in Congress: "That any people having the power have the right to raise up and shake off the existing form of government, and form a new one to suit themselves, according to the circumstances by which they are surrounded." I will offer this as a substitute for the section. It meets my views, and I do not care whether it meets anybody else's or not.

THE PRESIDENT. It is not in order.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: As the author of this amendment perhaps I would be justified in saying a word in support of it. The substance of the language which I have quoted will be found in article six of the Constitution of the United States. It reads:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

MR. HAGER. I believe that the gentleman has spoken once upon this question, and there are a great many others struggling to have the floor.

MR. MCCALLUM. I have not spoken before on my amendment. I simply introduced the amendment. I will give the gentleman from San Francisco, or whoever else may desire the floor, an opportunity in a very few minutes. This is the section. I have used only the words applicable to the Constitution of the State. "The Constitution of the United States is the supreme law of the land." That is the amendment which I presented in Committee of the Whole. The same amendment, I understand, was yesterday offered by the gentleman from Santa Clara, Mr. Tully. It was not in order then, as we were operating under the previous question. I wish to assure the gentleman that I have not offered this amendment for the purpose of getting any particular language of my own in the Constitution, and take this opportunity to disclaim any such intention. I prefer it to the article reported by the Committee of the Whole. This section, which the gentleman from San Francisco adheres to with such tenacity, reads as follows:

"SEC. 3. That this State shall ever remain a member of the American Union; that the people thereof are a part of the American nation; that there is no right on the part of this State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union, or sever said nation, shall be resisted by the whole power of the State."

I submit that that is the language of a people who admit that they have been subjected, and promise, in their Constitution, that they will never behave badly any more. As this is a loyal State, however, it would be wholly unbecoming. There is another objection to it similar to that which was made by Colonel Benton to the celebrated Kansas and Nebraska bill. He said, speaking of a section of it, that it was a stump speech in the belly of the bill. This section three is a stump speech in the body of this Constitution. It is not proper language for a Constitution, and while I concede, especially in view of this debate, it is proper that something should be said, I cannot see that there could be anything better than to use the language of the National Constitution. I do not see the necessity of saying a single word in addition. The gentleman from Santa Clara asks me who made the Constitution of the United States? If he will read the preamble to the Constitution he will see that the people of the United States made the Constitution, and if he will read the history of the country he will find that the very question he is now asking is the question that Patrick Henry asked of the Virginia statesman, when upholding the Constitution of the United States because it used that language, "We, the people of the United States." But I am not aware that, after it had been adopted by the requisite number of States, any gentleman, except the gentleman from Santa Clara, Mr. Tully, has asked the question since. I want to say one word further, with reference to the course of members here in voting upon propositions of this kind. On all propositions of this sort, as to the principle, I yield my sentiment to no man, nor to no number of men. If I were instructed on a question of magnitude, like this, to vote contrary to my sentiments, I would resign my position before I would do so. There are some other questions, however, which are not of that nature. I confess, sir, that I am one of the many who voted for a certain clause in section nine. I am aware that I reflected my sentiments, and my sentiments have not changed. I am aware, further, that as to my sentiments they were not made the subject of discussion before I was elected, and that after my vote was rendered, about a month and a half ago, I found not only the newspapers of my county opposed to the vote which I had given, but without an exception my constituents who expressed themselves upon the subject. As to the advocacy of what was called the Fawcett amendment, it is confined to very few papers in the State. I think those few papers were right, and that the others were wrong. My constituents were against it, and those even who were convinced by considerable argument that I was right and they were wrong, still thought, as a matter of policy, we ought not to put that amendment there and lose the support of the public press; that we desire to support this Constitution on matters of greater moment. I can say to the gentleman from Sacramento, who puts himself up here as a schoolmaster, that his advocacy of the Fawcett amendment, and the advocacy of it by the Sacramento Union, did not contribute in the slightest degree to the popularity of the Fawcett amendment. I am not here to be lectured by fellow members. This, I believe, is the first vote I have had occasion to change in public life. I am not ashamed of having changed it, because there are certain great principles which I desire to see become a part of the organic law of this State, and I will sacrifice more than my vote on a question like the libel law before I would sacrifice these greater principles, which I hope to see become a part of the organic law. I am not here for the purpose of any claptrap with reference to those who have differed with me in times past, when there were causes for difference with reference to the issues involved in the late civil war.

THE PRESIDENT. The gentleman's time is exhausted.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I regret that this amendment by my colleague from San Francisco, Mr. Estee, has been proposed, and this debate thereby precipitated. He claims it has originated in patriotism, and that we ought, in this manner, to place ourselves under the flag of the Union as our platform. I can hardly conceive the amendment had its origin in patriotism, nor do I believe that my colleague has any more patriotism or loyalty to the Federal Constitution and flag than I have. When the first gun was fired upon Sumpter, each of us took our stand by that Constitution and under that flag, and there we remained. During the rebellion we fought in a common field; hand in hand, and shoulder to shoulder, we went together through the struggles of that unfortunate conflict—that is, in spirit; personally, we remained at home [laughter], and let others fight the actual battles of the civil war; there-

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fore I can claim as much patriotism here as he does. I am no more a secessionist than he is. I am as patriotic and loyal as he is. Why should we renew this struggle here in this Convention? I stated that the proposed amendment did not have the merit of patriotism. It has not even the merit of originality. It was not conceived in the brain of my friend, but it originated in one of those carpet-bag governments forced on the people under the Reconstruction Acts of Congress, while a military Governor presided over the State—in the State of North Carolina. Now, see how exactly parallel the two paragraphs are, and see if my colleague can claim originality for the proposed amendment. I will read from the Constitution of the State of North Carolina, to show how exactly he has copied:

"That this State shall ever remain a member of the American Union; that the people thereof are a part of the American nation; that there is no right on the part of this State to secede; and that all attempts, from whatever source, or upon whatever pretext, to dissolve said Union, or sever said nation, shall be resisted by the whole power of the State."

I believe my colleague's amendment is word for word the same as the clause I have just read from the Constitution of the State of North Carolina; and we are called upon as patriots to denounce the doctrine of secession by taking a paragraph from the Constitution of a disloyal State, placed there as a condition of their re-admission into the Union, and incorporate it in the Constitution of the loyal State of California. Well, as the delegate from Santa Clara has just recommended, "The flag of our country and the Union forever" might also be incorporated in the Constitution. But if the "bloody shirt" is to be the battle cry in the next campaign, I would suggest to my colleague the adoption also of those other lines:

"By that dear shirt we wave the sword on high,
And swear by it to live, for it to die."

As I have said, the amendment has neither the merit of patriotism or originality. Let us cast it aside as a disturbing element about which, as members of this body, we have no concern.

Mr. President, in regard to the original paragraph that recognizes "the Constitution of the United States of America as the great charter of our liberties," etc., I have no objection to the principle, but I should prefer the language of the Constitution of the United States as it is. And I have drawn an amendment which reads: "We recognize the Constitution of the United States and the laws of the United States made in pursuance thereof as the paramount law of the land." If we have any declaration I would prefer it should be in this form. But there is another paragraph in the Constitution of the United States to which, in this connection, it is well to refer: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people" (article eleven, section nine). There the Constitution of the United States recognizes some other authority than the Government of the United States. "Reserved to the States;" "reserved to the people." What does that mean? Does it mean an all-powerful, omnipotent government? Or does it mean a government of delegated powers, and that all other powers are reserved to the States and to the people? It is not then a paramount government, paramount over the people, and paramount over the States; but paramount to the extent of delegated powers. As such I recognize it. I recognize the Constitution of the United States and the laws made in pursuance thereof as the supreme law of the land; and I recognize the power in the States and the power in the people, as it is recognized by the Constitution. Now, is it the great charter of our liberties? What was the Declaration of Independence? I read a paragraph:

"We, * * * by the authority of the good people of these Colonies, solemnly publish and declare that these united Colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent States may of right do."

There we find the great charter of our liberties, and who can gainsay it? There it is, and we will put a falsehood in this Constitution if we declare the Constitution of the United States to be the great charter of our liberties. No American that knows the history of his country, and the wars of the revolution and the rebellion against Great Britain, can say otherwise. Next we had the Articles of Confederation, under which we had a government, and next the Constitution of the United States—the third charter of our liberties, if it be a charter at all. Therefore, I am opposed to the section as adopted in Committee of the Whole, and prefer to it the proposition of my friend from Alameda.

I had drawn an amendment, and if it is necessary to put in anything at all, I would be willing to adopt this: "We recognize the Constitution of the United States, and the laws of the United States made in pursuance thereof, as the supreme law of the land." That is somewhat different from Mr. McCallum's.

MR. ESTEE. See if it is in the Constitution of Missouri.

MR. McCALLUM. Why not use the briefest mode of expressing it?

MR. HAGER. I thought of the Chinese question. I was afraid some one would get up and move an amendment, excepting the treaty with China.

[Laughter.]

MR. McCALLUM. Inasmuch as the Constitution of the United States uses that same language, why the necessity of adding the words, "and the laws of the United States, made in pursuance thereof?"

MR. HAGER. I wrote mine before I heard the luminous amendment that the gentleman proposes.

MR. ESTEE. I want to know if there is anything in the Constitution of Missouri on this question?

MR. HAGER. There is, sir. I thought at first that I had followed the Constitution of Missouri, but come to look at it I find I have not. Why should we admit that there is anything like secession in this State, or anything like disloyalty, and place ourselves in the position of a reconstructed State?

THE PRESIDENT. The gentleman's time has expired.

MR. WEBSTER. Mr. President: I wish to offer an amendment when an opportunity offers, which reads as follows: "Amend section three so as to read as follows: 'We recognize the Constitution of the United States of America as the supreme law of the land, and the State of California as an inseparable part of the American nation.'" It occurs to me that it is less objectionable than any that has been offered, and covers all the cardinal points in both the original proposition and the one offered by the Committee of the Whole.

REMARKS OF MR. KLEINE.

MR. KLEINE. Mr. President: I have been a citizen of the United States twenty-eight years. I am willing to respect the United States Government as long as the Government protects me; but, gentlemen, as long as the Government of the United States won't protect its own citizens, I do not see any reason why we should respect the Government. I listen to these gentlemen here quote the United States Constitution. Mr. President, there is just as much difference as day and night between the Government of the United States one hundred years ago and now. Fifty, sixty, or seventy years ago our Government was in favor of the poor; it protected the poor man, but now it has become an aristocracy. The poor man has no chance whatever. Here in our beautiful State, which I have been a resident of over twenty-six years, and I know very well whereof I speak, it is covered with beggars, men that have fought in our civil war. In Sacramento I see between eighty and ninety American citizens watching right there at the corner for a piece of bread, for something to keep soul and body together. I ask them, "what is the matter with you?" "We have been traveling all over and we cannot get work." Some gentleman said, "I have fought in the civil war and have bled for the stars and stripes, and this is what the Government gives me." They are passing laws now in the eastern States, what we call the Tramp Law, to arrest every man that seeks for work. Now, if our Government progresses as it has done so far our Government will be just as bad as the Governments of Europe, and the capital class will rule. The idea here is that no matter what our Government will do we have no right to secede. I differ with you, gentlemen. If our Government don't protect us, and if our Government is to make this State a China Empire, I say that we have a right to secede, and we have a right to protect ourselves.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: I believe I am as much devoted to the Constitution of the United States as any of the gentlemen. I opposed secessionism during our civil war and cast my vote twice for Abraham Lincoln. Therefore I cannot be charged with secessionism or any taint of it. But, sir, we are surfeited with the bloody shirt being flaunted on all occasions by parties who staid at home instead of going to the front. It is simply political claptrap, and we want none of it in this Constitution. California never wanted to go out of the Union. There never was any attempt made to take her out of the Union. Secessionism was not entertained by one man out of a hundred here during the civil war. Therefore we are not called upon to reproach ourselves with that heresy. I shall, therefore, vote for the amendment offered by the gentleman from Alameda, Mr. McCallum.

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

Seconded by Messrs. Barton, Lampson, Wilson of Tehama, and Dean.

THE PRESIDENT. The Chair will not enforce the rule, in case the previous question is sustained, on this particular amendment. The previous question would bring up all the amendments pending to the whole article, one after another, and then the main question would be, whether the article be engrossed and read a second time.

MR. MORELAND. I withdraw the motion under those circumstances.

Upon the adoption of the amendment of Mr. McCallum, the ayes and noes were demanded by Messrs. Larkin, O'Sullivan, Tully, White, and McCallum.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Farrell,	Lampson,
Ayers,	Filcher,	Larkin,
Barbour,	Freeman,	Lavigne,
Barry,	Freud,	Lewis,
Barton,	Garvey,	Mansfield,
Beerstecher,	Glascock,	Martin, of Alameda,
Belcher,	Grace,	Martin of Santa Cruz,
Bell,	Gregg,	McCallum,
Biggs,	Hager,	McComas,
Boucher,	Hale,	McConnell,
Brown,	Harrison,	McCoy,
Caples,	Harvey,	McNutt,
Casserly,	Heiskell,	Moffat,
Chapman,	Herold,	Moreland,
Charles,	Herrington,	Morse,
Condon,	Hitchcock,	Murphy,
Cross,	Holmes,	Nelson,
Crouch,	Howard, of Mariposa,	Neunaber,
Davis,	Huestis,	Ohleyer,
Doyle,	Hughey,	O'Sullivan,
Dudley, of Solano,	Hunter,	Prouty,
Dunlap,	Joyce,	Pulliam,
Estee,	Kelley,	Reddy,
Evey,	Keyes,	Reed,

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Reynolds,	Steele,	Vacquerel,
Rhodes,	Stevenson,	Walker, of Marin,
Ringgold,	Sweasey,	Waters,
Shoemaker,	Swenson,	Webster,
Shurtleff,	Swing,	Wellin,
Smith, of Santa Clara,	Thompson,	White,
Smith, of 4th District,	Tinnin,	Winans,
Smith, of San Francisco,	Townsend,	Wyatt,
Soule,	Tully,	Mr. President—101.
Stedman,	Tuttle,	

NOES.

Blackmer,	Inman,	Stuart,
Burt,	Jones,	Walker, of Tuolumne,
Dean,	Kleine,	Weller,
Dowling,	McFarland,	West,
Hilborn,	Mills,	Wilson, of Tehama—17.
Howard, of Los Angeles,	Rolfe,	

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. McCallum.

Adopted.

MR. ESTEE. Mr. President: I offer an amendment, to be added to the end of that adopted.

THE PRESIDENT. The Secretary will read the amendments as reported by the Committee of the Whole, commencing at section thirteen.

THE SECRETARY read section thirteen, as follows:

"SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial, to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. The Legislature shall have power to provide for the taking and using of depositions of witnesses in criminal cases, where there is reason to believe that from any cause the witness will not attend at the trial, or may be unable to do so."

THE SECRETARY read section fourteen, as follows:

"SEC. 14. Private property shall not be taken for public use, without just compensation having been first made to, or paid into Court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, in a Court of record, as shall be prescribed by law."

MR. JONES. Mr. President: I wish to offer an amendment.

THE PRESIDENT. It is not in order at present. The Secretary will read section sixteen, there being no amendment to section fifteen.

THE SECRETARY read:

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

THE PRESIDENT. The Secretary will read section eighteen, there being no amendment to section seventeen.

THE SECRETARY read:

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

THE PRESIDENT. The Secretary will read section twenty-three.

THE SECRETARY read:

"SEC. 23. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

THE PRESIDENT. The Secretary will read section thirteen.

DEPOSITIONS OF WITNESSES.

THE SECRETARY read:

"SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law. The Legislature shall have power to provide for the taking and using of depositions of witnesses in criminal cases, when there is reason to believe that from any cause the witness will not attend at the trial, or may be unable to do so."

THE PRESIDENT. The question is upon concurring in the action of the Committee of the Whole upon that amendment.

MR. JONES. Mr. President: I wish to offer an amendment to section thirteen.

THE SECRETARY read:

"Amend by striking out all after the word 'law' in line seven."

REMARKS OF MR. JONES.

MR. JONES. Mr. President: I understand, sir, that the object of inserting the words which I now move to strike out was to relieve witnesses from the very manifest hardship in cases where they are unable to furnish bail, and who reside at some other place than where the charge is made. That is certainly a meritorious object, and if it could be attained without danger of sacrificing the rights of citizens who are charged with crime, I should most heartily favor it. But, sir, in order to attain that object we have to abandon one of the rights which has been heretofore so highly prized, the right of being confronted with their witnesses, and meeting their accusers face to face. That has been regarded as a right of the defense, not to be lightly thrown away, for hundreds of years by the English speaking people. It is important and essential in the safe administration of justice that the defendant should meet his accusers face to face, that he should see the witnesses and have an opportunity of cross-examining them, to ascertain what sort of character they possess; whether they are men of truth and standing in the community, or whether they are mere perjurers, and persons liable to be suborned. All this is to be thrown away if we adopt the section as it is. If we do now abandon it, we cast ourselves upon an untried sea, and trifle and experiment with the lives and liberties of ourselves and our fellow citizens. It is well known to all gentlemen acquainted with the proceedings of Courts, that depositions do not stand as having the same authority, as being entitled to the same weight as the sworn verbal testimony of a person who can be seen, who can be judged by his character and standing, as to his truth, as to his qualifications, as to his title to be believed. They do in law stand equal, but practically they do not. A man in a strange city may find himself brought up on a charge of murder, or any other charge, and, under such a provision as this, he may find himself confronted on the trial by the depositions of a lot of criminals, and he cannot put his eyes upon any one of them, and no man in the vicinity may know them. A mass of testimony could be piled up in that way which could not be refuted, and which would stand as good against other witnesses. You could not impeach it. The witnesses might be in the Empire of China by the time the trial comes on, and yet leave their depositions, which would stand, like the testimony of reliable witnesses. There would be no chance for the defendant to meet the witnesses face to face, and cross-examine them as to their bias, as to their previous lives, and as to their character, as to their having been imprisoned for crime, or indicted for crime, in half the States of the Union. No such examination can take place. All you need, in order to convict anybody, is to get hold of a mass of worthless men, and take their depositions. Upon the day of the trial they will be somewhere else, doing the same thing. This is making the most dangerous class of perjurers in the community the most convenient tools to carry out the most infamous crimes against any citizen. I don't know of any State in the Union where the lives and liberties of the citizens have been exposed to such a danger as this. Upon the contrary, they all seem to think that one of the most valuable guarantees to the liberties of the citizens, that they shall, when accused of crime, meet their accusers face to face, and have the right of cross-examination, not only in regard to the matter involved in the charge, but as to who they are, what they are, and where they came from; where they have been, and how many times, if at all, they have been in prison; and how many times, if at all, convicted of perjury. Under such a system no man would be safe except in his own immediate neighborhood. No man would be safe in a strange place, provided anybody saw fit to charge him with crime. Without the right to impeach the man bringing the charge, there would be no safety. For these reasons I feel a strong personal desire that these words may be stricken out. I should prefer section thirteen, as reported by the committee, that the party accused shall have the right to a speedy and public trial, etc.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I think it is very important to take depositions in that kind of cases. The complaint is not so much that innocent men are convicted, as that the guilty escape punishment. Now, on the other side, when complaint is made against any person charged with crime, there is often delay, sometimes for weeks and months, and when the period of trial comes, the witnesses cannot be found. They are gone. They cannot be got. Sometimes they are spirited away, and the result is that they defeat the ends of justice. Sometimes we lock men up because they cannot give bail. Thus an innocent man is made to suffer when he has committed no crime.

MR. JONES. Do we not propose that they shall not be put in jail.

MR. HAGER. If they are not put in jail, and do not give security, they are liable to be spirited away. I am speaking of the difficulties we have encountered, and the remedies we are trying to adopt. Now, I will ask my friend over there what can be the objection to taking the deposition of a witness in the presence of the party accused. If the party accused is present, that is being confronted with the witnesses; and what objection can there be to it. How can he suffer any wrong. He is confronted with the witness. He can cross-examine the witness; he can impeach him, the same as if the testimony was taken in Court. Why, in some cases, all the testimony is in the form of depositions. I have here an amendment which I will send up. I will read it:

"Strike out the words 'and using,' in line eight, and insert as follows: 'in the presence of the party accused and his counsel.' In the same line, after the word 'cases,' insert the following, 'other than cases of homicide, and using the same.'"

MR. JONES. I would suggest that you insert, "and with the assistance of counsel."

MR. HAGER. I think that is provided for in another section. I will state again that it is very necessary and essential in the administration of justice in large cities, that this privilege of taking depositions should be obtained; otherwise there will be a failure in the administration of justice in many cases, because the witnesses cannot be had.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: When this matter was up before the Committee of the Whole, I took occasion to express my views. I do not desire to do so again, but I desire to call attention to the reasons which seem to me to be very strong against the adoption of this section as it stands. I am in favor of the amendment offered by Judge Jones. If that does not carry, I shall certainly support the amendment of Judge

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Hager. I would be in favor of the original section reported by the committee, because it provides that the defendant must be brought face to face with the witnesses, and that is the only correct principle of law. Now, it seems to me that it violates every security to life and liberty to say that a man shall be tried without the witnesses being present before the tribunal which tries him. Take a man who is charged with crime, and is here in jail. He is served with notice to appear at the taking of a deposition in Los Angeles or Shasta. He is poor and cannot go there himself. He has not the money to hire an attorney. Now, what is the consequence? Why, the leading witness in the case gives his testimony, and the accused has no chance to cross-examine him. That principle is wrong. No man in this house, if charged with crime, would like to have his case tried upon depositions taken at remote points of the State, and beyond the notice of the tribunal before which he is tried. I know there are some difficulties in the way of getting witnesses before the Court; but that is a small matter compared with the necessity of giving a defendant a fair trial. I say, it is no trial at all, when a man's life is in jeopardy, to be tried upon written depositions taken two hundred miles away. It is contrary to the law of this State. The old Constitution says nothing about it, leaving it to the Legislature; and the Legislature never has provided that a man may be tried upon depositions. Depositions taken in the committing magistrate's Court, when the defendant is present, may be used afterwards, and that is all.

MR. HAGER. The Legislature did so provide, but the Supreme Court declared it unconstitutional.

MR. MCFARLAND. Well, that was so long ago that only a few of us can remember it. The law has always been, that in criminal trials the defendant must be confronted by the witnesses in Court. The jury which tries a man must see the witnesses, so as to be able to determine from their appearance what credence to give to their testimony.

MR. WILSON, of First District. Mr. President: I wish to send up an amendment to the section. Insert in line eight, after the word "cases," the following: "other than cases of homicide."

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I think, sir, that the truth lies between the two propositions which have been presented here upon either side. I see a great deal of force in the argument of the gentleman from Mariposa, and a great deal of truth in the arguments presented by the gentleman from San Francisco and the gentleman from Sacramento. The question is, what is the proper medium between these conflicting views? Now it is certainly a great objection that when a crime is committed upon a stranger, as has been the practice in the past, he must either give bonds for his appearance as a witness against the accused, or else go to jail and stay there until the time of the trial. That is a very great objection. Upon the other hand, it is considerable of an objection that a man should be convicted of a high crime without having the witnesses in Court and before the jury. But it seems to me that by confining this to cases other than cases of homicide, that there could be but very little objection. This amendment which I propose could either be inserted in the amendment of Judge Hager, or in the section itself. Now when you come to a case of homicide, where the life of the accused is in danger, I think he should have every opportunity of establishing his innocence. Every chance should be afforded to him for a fair trial, and he should have an opportunity of letting the jury see the man who is swearing away his life. The jury are said to be the best judges of the credibility of the witness. They look at his actions, at his manner, at his mode of testifying, at his intelligence, who he is, and where he came from. All those things I think a man should have an opportunity of presenting to the jury who are trying him, in a case where his life is at stake. It must be admitted by all that it is a very great hardship for a man to be confined in jail when he has committed no crime, when he is charged with no crime. There are many instances in the City of San Francisco, in New York, and in other large cities, where crime goes unpunished, merely because the victims cannot afford to make complaint, for fear of being detained. They may be robbed on the streets or at their hotels. They may have taken passage on some outward bound steamer, and they make no complaint of the crimes committed upon them, because if they do they are likely to be locked up in jail, and by that means lose their passage upon the steamer. So, in order to avoid the delay, they do not complain. Now, in order to harmonize these conflicting opinions, I think the depositions of witnesses should be allowed in all cases where the punishment is not capital. In capital cases we should adhere to the safer rule.

MR. HAGER. I will accept that amendment.

THE PRESIDENT. The question is upon the adoption of the amendment of the gentleman from San Francisco, Judge Hager, as modified by the amendment of Mr. Wilson.

Adopted.

THE PRESIDENT. The question is upon the adoption of the amendment of the gentleman from Mariposa, Judge Jones.

Lost.

MR. SHURTLEFF. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by striking out all after the word 'that,' in line nine, and insert in lieu thereof, 'the witness, from inability or other cause, will not attend at the trial.'"

MR. SHURTLEFF. That is simply to correct the phraseology.

THE PRESIDENT. The question is upon the adoption of the amendment.

Division being called for, the vote stood: Ayes, 47; noes, 22—no quorum voting.

THE PRESIDENT. There is evidently a quorum present. The question will be put again.

Adopted.

THE PRESIDENT. The question is upon the adoption of the section, reported by the Committee of the Whole, as amended.

MR. MILLS. I offer an amendment.

THE SECRETARY read:

"Amend amendment, adopted in Committee of the Whole, to section thirteen, on line four, after the word 'counsel,' add and insert the following words, 'to have the jury selected from the district, county, or township in which the crime is charged to have been committed, unless the venue be changed, as provided by law.'"

MR. MILLS. Mr. President: The object of that amendment is, that in criminal cases, the venue may be changed; to have the jury selected from the district, county, or township in which the crime is committed. I believe there is no other provision in the Constitution providing that the defendant shall be entitled to a change of venue. There is no provision in the statutes providing that the venue may be changed on the part of the prosecution. It seems to me highly necessary.

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

Lost.

THE PRESIDENT. The question is on the amendment of the Committee of the Whole, as amended by the Convention.

Adopted.

EMINENT DOMAIN.

THE PRESIDENT. The question is on the amendment of the Committee of the Whole to section fourteen. The Secretary will read.

THE SECRETARY read:

"SEC. 14. Private property shall not be taken for public use without just compensation having been first made to, or paid into Court for the owner; and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, in a Court of record, as shall be prescribed by law."

MR. JONES. Mr. President: I offer an amendment.

THE SECRETARY read:

"SEC. 14. Amend by adding the following, viz.: 'Nor shall the time or services of any person, except when held or under arrest for crime, be taken by virtue of any lawful writ, process, or order of any Court or magistrate, without just compensation, to be fixed and provided for by law.'"

SPEECH OF MR. JONES.

MR. JONES. Mr. President: I desire, as briefly as possible, to explain the object of that amendment. Something similar to it was offered in the section presented by the committee, but it was stricken out by the Committee of the Whole. The amendment offered will include all cases in which witnesses and jurors are taken from their business, and their time and services appropriated by the State, in matters in which they have no special concern, without compensation. As originally presented by the Committee on Preamble and Bill of Rights, these other words were not included. Now, there is a grievous wrong done here. The people of the State maintain Courts for the administration of justice. In order to do so they have to employ agents or officers, and these are paid, embracing the Judge to preside at the trial, and he is paid a fair salary. They employ Clerks to keep the record of the proceedings. They employ District Attorneys to prosecute in criminal proceedings. They employ Sheriffs to serve the processes of the Court, and perform other duties pertaining to their office. The counties pay them all, and pay them justly, as they ought to. It has never been contended that their services can be taken without compensation. But there are other men, whose services are equally necessary and indispensable in the administration of justice, who have no personal interest whatever in the matter—none whatever, except the general interest which all good citizens should feel—the same interest which the Judge, and the Sheriff, and the Clerk should have. These men are taken from their homes, in criminal cases, by the process of the Court, which is compulsory, and if they do not obey they will be punished. They are compelled to leave their business and go to the county seat, there to remain, at their own expense, for days and weeks. I have known witnesses to be so held for more than three weeks.

MR. WATERS. Don't you know we have a provision now for paying those who are unable to pay their expenses?

MR. JONES. No, sir. There is a provision. There is a provision that if a witness called to testify on behalf of the people, and against the defendant, will swear that he is too poor to pay his expenses, and has no property, the County Judge may allow his expenses. I do not call that compensation. It is not a fair way to treat a citizen who is brought into Court by the process of the Court, in a matter he would gladly get away from.

MR. ESTEE. Would not the Legislature have power to make such a law as that without a constitutional provision.

MR. JONES. I think it would.

MR. ESTEE. Then why not leave the whole subject to the Legislature?

MR. JONES. Because the Legislature has never exercised that power. I think it should have been exercised long ago. For twenty-nine years it has never done it, and every year shows more and more how oppressive and unjust the law is in this regard. I know a number of instances where men were compelled to travel one hundred miles to the county seat. I have no doubt other gentlemen know of similar instances. It is a great hardship, and one which the citizens ought not to be compelled to endure. He is called on to serve in a case in which he has no possible interest. He does not want to go. His wife and children are at home. He has the living to earn. But when he protests, the Sheriff can only say: "Sir, it is the order of the Court."

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MR. GRACE. Under this amendment the defendant might have a right to have counsel employed for him.

MR. JONES. I am willing to guard against that by making an exception.

MR. WATERS. This matter is already provided for in the law, and when any matter is already provided for by statute there is no sense in repeating it in the Constitution. If the gentleman will turn to section one thousand three hundred and twenty-nine of the Code, he will find this matter freely covered. There is no need of enacting a full Penal Code in the Constitution. I hope it will be stopped.

THE PRESIDENT. The question is on the amendment of the gentleman from Mariposa, Judge Jones.

Lost.

MR. HAGER. Mr. President: I offer the following amendment to section fourteen: In line one, after the word "taken," insert "or damaged."

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: The original section reads, that private property shall not be taken or damaged for public use. I propose to restore those words. In some instances a railroad company cuts a trench close up to a man's house, and while they do not take any of his property, it deprives him of the use of it to a certain extent. This was brought to my notice in the case of the Second street cut in San Francisco. There the Legislature authorized a street to be cut through, which left the houses on either side high in the air, and wholly inaccessible. It was destroyed, although none of it was taken or moved away. There are many such cases, where a man's property may be materially damaged, where none of it is actually taken. So I say, that a man should not be damaged without compensation. I think the original report of the committee was right in that respect.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I think it would be dangerous to change this provision in this respect. This is the form in which it is found in nearly all the Constitutions in the United States. Now, to add this element of damage is to enter into a new subject. It is opening up a new question which has no limit. You take the case of street improvement, and this question of damage will open up a very wide field for discussion. My recollection is that when this question was under discussion in the Committee of the Whole, there was a very large preponderance of the committee in favor of this amendment to section fourteen. I regard it as very dangerous to undertake to enter into a new field. I have no disposition to enter into an argument upon it.

MR. HAGER. I refer you to the Constitution of Illinois which says that property shall not be taken or damaged.

MR. WILSON. That is one.

MR. HAGER. And the Constitution of Missouri. [Laughter.]

MR. WILSON. If it comes all the way from Pike, it must be good. [Laughter.]

MR. CASSERLY. I am sorry to see my friend's faith shaken in the Constitution of Missouri. He is now quoting from Illinois.

MR. WILSON. I will say here that the fact that it is found in the recent Constitutions is no argument in its favor. But that it is found in nearly all the old Constitutions is an argument, because it shows that they have tried it. An experiment untried is no argument at all. Now, these new Constitutions which my friend constantly intrudes upon this Convention are simply untried experiments. They do not know whether they will work well or not. They are simply trying the experiment. In twenty years from now our children can refer to them, and if they have worked well, that will be an argument. But to present the Constitution of Missouri here without knowing whether it will work well or not, is no argument at all.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: It will be remembered that the Committee of the Whole thoroughly discussed this question. These words, "or damaged," were reported by the Committee on Bill of Rights. There were many reasons urged why these words should be left out. A man's property might be damaged, when he would be entitled to no compensation. A man might have a public house on a public highway, and the highway might be changed for some good cause or other. The value of his property would be lessened by reason of the travel being diverted, and yet he would not have a just right to claim damages. He would be damaged by reason of a public use. I think it would be dangerous to insert such a provision as this. I am opposed to the amendment.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: What if a corporation wanted to build a road through the streets of a city. Take for instance, the Second street cut. The property there is absolutely destroyed, and yet not a foot taken. The houses on either side are in absolute danger of sliding off into the street below. I know that what the gentleman from San Francisco says about this being an untried experiment, is true, but it strikes me that the justice of it is apparent; that when a man's property is damaged it ought to be paid for. I am in favor of the amendment. I think it is the best we can get.

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

Division being called, the Convention divided, and the amendment was adopted, by a vote of 62 ayes to 28 noes.

MR. HERRINGTON. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'owner,' line three, down to and including the word 'corporation,' in line six."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I desire to call the special attention of the Convention to that portion of the section. I ask your careful and patient attention for a moment, and I think it will need no further argument. "Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner," etc. Now, the first part of that section is in very plain terms. That ends the matter, as far as a municipal corporation is concerned. But there can be no use for the second clause, after we have said expressly that the compensation must be first made or paid into the Court for the owner.

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

Lost.

MR. CROSS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after 'jury,' in line seven, 'unless a jury be waived, as in other criminal cases.'"

MR. CROSS. Mr. President: I will state briefly the object of this. This section provides that all cases where damages are assessed, in taking private property for public use, it must be assessed by a jury. I see no reason why this should always be done by a jury, if both parties choose to waive a jury. The question of damages in this class of cases is no different from the question of damages in other cases. It is enough to give either party the right to demand a jury. The jury entails considerable expense, and if both parties choose to waive a jury, that is all sufficient.

MR. JONES. Mr. President: I would merely make one suggestion, that the same object can be accomplished by striking out that portion in relation to a trial by jury, and then section seven comes in and says that the right of trial by jury shall remain. That will make the section shorter, instead of longer.

MR. CROSS. I would prefer to do it this way, and then there will be no danger of the Legislature getting around it, and saying that the question of damages may be determined by the Courts.

THE PRESIDENT. The question is upon the adoption of the amendment.

Adopted.

THE PRESIDENT. The question is upon the amendment recommended by the Committee of the Whole, as amended by the Convention.

Adopted.

OBLIGATION OF CONTRACTS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section sixteen.

THE SECRETARY read:

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

MR. WILSON, of First District. Mr. President: I give notice that to-morrow I will move a reconsideration of the vote taken on section fourteen.

THE PRESIDENT. Send it up in writing. The question is upon concurring with the Committee of the Whole in section sixteen.

Carried.

RIGHTS OF FOREIGNERS.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section seventeen.

"SEC. 17. Foreigners eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the possession, enjoyment, and inheritance of property as native born citizens."

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: The reason I voted against striking out this section is, that we have prevented the Chinese from holding property in this State. Foreigners, who are eligible to become citizens, may hold property. Any man, eligible to become a citizen, can hold property. Now, I think we would make a mistake if we strike out this section. The Chinese might come here and acquire all the property in the State of California. It would allow persons ineligible to become citizens to hold real estate.

MR. LARKIN. Mr. President: The reason I oppose the striking out of this section is, that there is a great deal of foreign capital invested in this State, and I think any act to disturb that class of investments in this State, or to impair their rights, would be wrong. I think this provision should remain. I think all persons who are eligible to become citizens of the United States should have that right. The understanding is, that persons who are eligible shall hold it. I think it ought to remain. I think it is a blow at the mining interest of this State to strike it out.

MR. CROSS. Mr. President: I am in hopes this section will stand just as it is. I think it is the most effectual blow we can give to Chinese immigration. I am in hopes that the section will be allowed to remain.

MR. DUDLEY, of Solano. Mr. President: It is wonderful what changes time works. My friend Cross and his friends, in Committee of the Whole, voted to strike out this section. The reason upon which they acted was that the question as to whether the Chinese were eligible to become citizens or not was a mooted question; that many of them had already been naturalized, and that it was very uncertain as to where we would stand. These were the reasons upon which the section was stricken out, and I am sure my friend Cross voted that way.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: There is no reason why this section should be retained in the Constitution. There is no probability of the Legislature refusing to grant to foreigners the rights which they should be granted. This was stricken out because it was supposed to

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be aimed at the Chinese question, and it was thought to be more proper in another place. They did so consider it in that article, and made a section providing, among other things, that no alien ineligible to become a citizen of the United States should be permitted to catch fish in the waters of this State, nor purchase, lease, own, or hold real property in this State. That section will reach the evil which this is designed to reach, and there is no need of this.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I hope this section will be stricken out. This morning we adopted section three of this very article, which says that we recognize the Constitution of the United States as the supreme law of the land. Therefore, we recognize that the United States have a right to make a treaty; and, sir, if you look in the treaty you will find the rights of foreigners perfectly well established. Look at the treaties of Germany, and Italy, and France, or whatever nation you please, and their rights are well defined. Therefore, I think this section is perfectly useless. The treaty making power is the one to regulate this question.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: This section is in the present Constitution, the only change being, foreigners eligible to become citizens. While it is true, as the gentleman from Sacramento says, that the Legislature might not do thus and so, I venture the opinion that most of the foreign born people will feel extremely sensitive upon the subject, unless this is put in the Constitution as it now is; because in the absence of such a provision in the Constitution, the Legislature could preclude that right. I do not remember what reasons were given in the Committee of the Whole for striking it out, but I believe one was that it was provided for in the article on Chinese, and that there was the proper place. That reason was not sufficient. Those who are eligible to become citizens should have their rights guaranteed by a Constitutional provision.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: Section seventeen, so far as it applies to foreigners of the white race, or of African descent, ought to be in the Constitution of this State. There is no reason why Frenchmen, or Germans, or Scotchmen, or Irishmen, or any other foreigners of the white race, who are bona fide residents of this State, should not be entitled to the privileges contained in this section. And, as one gentleman said, there is a good deal of foreign capital invested in our mines. There is no objection to having this class of persons. I believe under the common law these persons would have a right to hold property for the purpose of carrying on business. Why should they not be permitted to own property here? If it is feared that this section may give the Chinese the right to hold property, then the section should not be stricken out, but amended. I would propose, therefore, that instead of striking this out it be amended something like this: "Foreigners of the white race, or of African descent, eligible to become citizens of the United States, under the naturalization laws thereof, when bona fide residents of this State, shall have the same rights," etc.

MR. LARKIN. Foreigners of African descent, are they eligible to become citizens?

MR. WILSON. Yes, sir, they are. That language is used in the report—persons of African descent. Whenever it is in order I will move an amendment to that effect.

MR. CROSS. When the section says "foreigners eligible to become citizens," does not that include them?

MR. WILSON. I think it does, but I want to obviate whatever quibble might be raised. I am desirous myself of having a clause which will permit bona fide residents to have those rights.

MR. DUDLEY, of Solano. Suppose the Congress of the United States should pass a law whereby the Chinese could become citizens.

MR. WILSON. Then we could do nothing.

MR. DUDLEY. They would have all the rights of citizens.

MR. WILSON. Certainly. I pray God he may never become naturalized. When that time comes we will cross the bridge.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope the section will be retained. I think we ought to be ashamed to refuse a foreigner eligible to become a citizen of the United States the same rights that Americans enjoy in the civilized countries of Europe. I am not at all afraid that by conferring this right we shall confer upon the Chinese the right to hold property. Not at all, sir. We must take some chances. I am not afraid that it will ever be decided by the Courts, as the law stands now, that Chinamen can ever become citizens. As to the question of the possibility of Congress passing an Act conferring citizenship upon them, I do not think there is any danger from that source, from the way Congress is acting at the present time. Possibly, after the Presidential election, we may have some trouble; but so long as California holds the position she does, Congress will never pass such a law. I would suggest to the gentleman that the same object which his amendment contemplates can be attained by inserting the word "present," so as to read: "under the present naturalization laws thereof."

MR. WILSON. I do not stand upon the form of it. I do not care which one is adopted.

MR. CASSERLY. How many amendments are pending?

THE PRESIDENT. No amendment is in order at present. The question is upon concurring with the Committee of the Whole.

REMARKS OF MR. RINGGOLD.

MR. RINGGOLD. Mr. President: I shall be compelled to vote against retaining it. There is no use of it. There are a few Chinamen who are already citizens. I would like to tell my friend, Mr. Cross, if he is interested in favor of the Chinese, all he has got to do is to retain this section, because the Burlingame treaty will not always stand as it is to-day. It will be changed, and the Chinese will become citizens. Then what will this provision amount to? I think Mr. Wilson's idea is correct. I would like to see it inserted.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I trust that this section will be retained. It seems to me the reasons are very good. It has been the law of this State heretofore, and grossly unjust too, to exclude foreigners who have invested in real estate from holding that real estate. As to this matter of the Chinese, we do not get rid of the trouble by striking this out, because it all depends on the question of "white." The Act of Congress declares, that nobody but white men and negroes—that amendment having been made by the party in power—the whole question hinges upon the word "white." In this State, our Supreme Court has decided that Chinamen are not white men, but Indians. But the Supreme Court of the United States might upset that theory, therefore I am in favor of saying, directly, that the Chinese shall not hold real estate. They are still talking about persons ineligible to become citizens. Let us meet the issue squarely; we don't meet it by striking out the section.

MR. STEDMAN. I call for the previous question, and demand the ayes and noes.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: I am in favor of retaining this section. It is the doctrine which exists in all the modern Constitutions, that aliens shall be entitled to hold real and personal property. It is a provision found in all the Constitutions, and it is perfectly proper here, except that the privilege should be confined to those who are eligible to become citizens. Now, this section was introduced, *ex industria*, for the express purpose of reaching the Chinese. I believe, as the section stands, it does apply to and exclude the Chinese. It has been decided by Judge Sawyer, that the Chinese are not eligible, and that is the popular view, the almost universal view. The section, or the amendment proposed by Mr. Wilson, ought to be adopted. This right ought to be conferred by the State of California upon foreigners who come here. There is an immense amount of foreign capital in this State, and the owners ought to be protected in the use and enjoyment of it.

MR. O'SULLIVAN. Mr. President: I am in favor of striking out the section. I don't believe in giving any alien, whether Chinese or European, the right to hold property here. We have seen, in our civil war, these aliens holding large property in this State. I want to provide that no alien shall hold real property in this State.

THE PRESIDENT. The question is upon concurring with the Committee of the Whole, in striking out section seventeen.

The Convention refused to concur.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section eighteen.

THE SECRETARY read:

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

MR. WEBSTER. I offer an amendment.

THE SECRETARY read:

"Amend section eighteen so as to read as follows: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall ever exist in this State."

MR. WEBSTER. Mr. President: That is in better form I think. That is in nearly the exact language of the Constitution of the United States, and it is more explicit and covers the ground more fully.

THE PRESIDENT. The question is upon that amendment.

Lost.

THE PRESIDENT. The question is upon the amendment of the Committee of the Whole.

Adopted.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-two, which was stricken out.

THE SECRETARY read:

"SEC. 22. No money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State; nor shall any grant or donation of property ever be made thereto by the State."

MR. McCALLUM. That is in the legislative article.

MR. WILSON, of First District. Section twenty-two was stricken out by the Committee of the Whole, because it was covered by a provision in the legislative article. It belongs really to that department.

THE PRESIDENT. The question is upon concurring with the action of the Committee of the Whole.

Carried.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-three.

THE SECRETARY read:

"SEC. 23. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise."

Adopted.

MR. BARBOUR. Will a new section be in order now?

THE PRESIDENT. Yes, sir.

THE WHIPPING POST.

MR. HOWARD, of Los Angeles. Mr. President: I wish to make an inquiry. The gentleman from San Joaquin, Judge Terry, made a motion to reconsider some words that were stricken out of the sixth section, and requested me to bring it to the notice of the Convention. The words stricken out were with reference to the whipping post. On this matter

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I have not much to say. If it is reconsidered I shall move to limit the whipping post to garroters, hoodlums, and Chinamen.

MR. WEST. And wife-whippers.

MR. HOWARD. No, sir. I do not see any other mode of repressing hoodlums and garroters, and punishing Chinese misdemeanors, because when a Chinaman gets in jail he is in as good a place as a hotel. The only way is to whip him, and I am in favor of doing it. I move to reconsider that vote.

MR. MURPHY. I move to indefinitely postpone the motion to reconsider.

MR. REDDY. I move the previous question.

THE PRESIDENT. The question is on the motion to reconsider the vote by which that portion of the section was stricken out.

The ayes and noes were demanded by Messrs. Howard, West, Hitchcock, Winans, and Wilson of Tehama.

THE PRESIDENT. The question is on the motion to indefinitely postpone the motion to reconsider.

The ayes and noes were demanded by Messrs. Howard of Los Angeles, Winans, Prouty, Keyes, and Nason.

The roll was called, and the motion to reconsider was indefinitely postponed, by the following vote:

AYES.

Andrews,	Harrison,	Rhodes,
Ayers,	Harvey,	Ringgold,
Barbour,	Herold,	Rolfe,
Barry,	Herrington,	Schomp,
Bell,	Huestis,	Shurtleff,
Blackmer,	Hunter,	Smith, of Santa Clara,
Boucher,	Inman,	Smith, of 4th District,
Brown,	Joyce,	Smith, of San Francisco,
Casserly,	Kenny,	Soule,
Charles,	Kleine,	Stedman,
Condon,	Larkin,	Stevenson,
Cross,	Lavigne,	Sweasey,
Davis,	Lewis,	Swenson,
Dean,	McCallum,	Swing,
Dowling,	Mills,	Thompson,
Doyle,	Morse,	Tully,
Estee,	Murphy,	Vacquerel,
Evey,	Nason,	Walker, of Marin,
Farrell,	Nelson,	Walker, of Tuolumne,
Freeman,	Neunaber,	Waters,
Freud,	O'Sullivan,	Wellin,
Garvey,	Pulliam,	White,
Gorman,	Reddy,	Winans,
Hager,	Reynolds,	Mr. President—73.
Hale,		

NOES.

Beerstecher,	Holmes,	Ohleyer,
Burt,	Howard, of Los Angeles,	Prouty,
Caples,	Howard, of Mariposa,	Reed,
Chapman,	Hughey,	Shoemaker,
Crouch,	Jones,	Steele,
Dudley, of Solano,	Kelley,	Tinnin,
Estey,	Keyes,	Turner,
Filcher,	Lampson,	Webster,
Glascock,	Mansfield,	Weller,
Grace,	McComas,	West,
Gregg,	McNutt,	Wilson, of 1st District,
Heiskell,	Moreland,	Wilson, of Tehama—37.
Hitchcock,		

MR. WEBSTER. Mr. President: Is it in order to add to section three as amended?

THE PRESIDENT. No, sir.

MR. ROLFE. Mr. President: I gave notice yesterday of a motion to reconsider the vote by which the Convention refused to adopt the amendment to Rule Twenty-four. I now wish to call up that motion.

THE PRESIDENT. It is not in order now, while we are in the middle of the consideration of this article.

PROPERTY QUALIFICATIONS.

MR. FREUD. Mr. President: I would like to offer a new section.

THE SECRETARY read:

"SEC. —. No property qualification shall ever be required for any person to vote or hold office."

REMARKS OF MR. FREUD.

MR. FREUD. Mr. President: This provision ought to be found in the article on right of suffrage, but it is not to be found there. There is no restriction upon the Legislature in the enforcement of a property qualification. You will remember that, some time ago, when the Committee of the Whole had this provision under consideration, it read, that no property qualification should ever be required for a person to vote, hold office, or become a juror.

You will notice that the provision as now presented, merely covers suffrage and office. It is my sincere conviction, however, that the jury ought to be placed in the same category. He who wields the ballot decides the liberty and the destiny of a great nation. He who wields the gavel decides merely the life and fate of an individual. The ballot is the mighty sun; the jury is but the revolving satellite. But, sir, I do not wish to hazard the greater to win the less, and I am therefore reluctantly persuaded to sacrifice the rights of the juror to the safety of the citizen. Some gentlemen seem to believe that this section has no proper place in the bill of rights; they certainly are in error. On the contrary, if there be an article in the whole Constitution to which this section of right and of reason belongs, it is the declaration of fundamental principles. Why, in the ballot is the epitome of progress; the office is the emblem of stability. What right is there broader than liberty? What principle grander than equality? Every State of the Union that has risen to this declaration has placed it in the bill of rights. No Constitution of which I know, has it elsewhere. No other committee of this Convention has reported the subject. There can be no doubt that its proper and only place is amongst the corner-stone maxims of a State.

Let us see what is a bill of rights? "A bill of rights," says Judge Story in his Commentaries, page 697, "is an important protection against unjust and oppressive conduct on the part of the majority of the people themselves. In a Government modified like that of the United States, the great danger lies rather in the abuse of the community, than of the legislative body. The prescriptions in favor of liberty ought to be leveled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in the executive or legislative departments of government; but in the body of the people, operating by the majority against the minority."

Now, sir, the American nation is eminently a nation of landholders and property owners. This provision, then, is essentially a protection and encouragement to the small landless minority. It is a privilege and comfort to the unfortunate few in their desperate struggles for existence. Perhaps the most admirable feature of the Republic is, that the minority of to-day often becomes the majority of to-morrow. Here, sir, neither poverty nor wealth is immutable or immortal. Let a wealthy majority of this House refuse to sanction this protecting shield, and the evil day may yet come, when as a poor minority it will forever mourn its heedless tyranny. No other place is so fit as the bill of rights, and no other time is so opportune as now, to inscribe indelibly upon the organic scroll this ancient and noble declaration of the sovereignty of the people. There are three great and grave thoughts bearing directly upon this subject, to which no reference has as yet been made. Perhaps more than any other they have induced me to strive for the insertion of this section. It will take but a few minutes to lay before you a skeleton of each.

First, the ballot is the best educator of this age. The press, the pulpit, and the rostrum engrave principles upon men's minds; but the ballot awakens the innate genius of the citizen. It is, therefore, the creator and instrument of the highest manhood. "Among the foremost benefits of free government," says John Stuart Mill in his Considerations on Representative Government, page one hundred and seventy, "is that education of the intelligence and of the sentiments which is carried down to the very lowest ranks of the people, when they are called to take a part in acts which directly affect the great interests of their country," by which it must come. The free exercise of the ballot infuses and diffuses intelligence and independence. To vote is to think, and thought is the essence of all knowledge. Political discussion is worth more to the manual laborer than all the books on political economy. Political action is the very best teacher of the science and ethics of government. And so it is that the American citizen has come to be famous for his political sagacity and worldly knowledge. "I have lived," says De Tocqueville in his masterly work on American Institutions, page three hundred and twenty-two, "a great deal with the people in the United States. The citizen of the United States does not acquire his practical science and his positive notions from books. He learns to know the laws by participating in the act of legislation; and he takes a lesson in the forms of government, from governing. The great work of society is ever going on before his eyes, and, as it were, under his very hands." Rather, then, I say, part with the public school than with the public ballot, for knowledge without freedom is like the spectroscope without its prism. Liberty, like the sun, breaks on the soul and fires all the faculties. What property is to the rich, the franchise is to the poor. It is in truth the great leveler of society. So long as the public school instructs the youth, and the public ballot enlightens the citizen, I have no anxiety for the future of our country. The school house is the heart and the ballot box is the lungs of the body politic. Destroy or cripple either, and the Republic must crumble or fall.

In the second place, the ballot is the mother of patriotism. I do not mean the patriotism arising from the instinct of native land, for that is merely transient and soon withers, but the patriotism nurtured by the exercise of civil rights; the patriotism that is perennial and forever green. Upon this point, let me read you a few lines from DeTocqueville's masterly work on American institutions, page two hundred and forty-four:

"I maintain that the most powerful, and perhaps the only, means which we still possess of interesting men in the welfare of their country, is to make them partakers in the Government. How happens it that in the United States, where the inhabitants arrived but as yesterday upon the soil which they now occupy, and brought neither customs nor traditions with them there; where they met each other for the first time, with no previous acquaintance; where, in short, the instructive love of country scarcely exists; how happens it that every one takes as jealous an interest in the affairs of his township, his county, and the whole State, as if they were his own? It is because every one in his sphere takes an active part in the government of society."

It is that feeling of something in common and inseparable between the government and the subject that inspires the citizen with an undying love for the Republic. Such is the spirit that will elevate the dull coward into the bold patriot. Such is the power that has raised the servile slave into the aspiring citizen. And such is the mighty link that binds together forever the hearts of a people and the fate of their country.

The third and last thought that occurs to me is one for which I respectfully ask your earnest and deepest consideration. It involves the peace and safety of the State. As on the one hand, the ballot is the great educator of the people, so on the other it is the great safety valve

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of their discontent. Free governments must progress, otherwise they decay. The ballot is the instrument of reformation; take it away and revolutions must ensue. It is, therefore, preëminently the conservator of peace. As Ralph Waldo Emerson, in his late essay on the Fortune of the Republic, has well said: "We began with freedom, and are depended for shocks now for a century, by the facility with which, through popular assemblies, every necessary measure of reform can instantly be carried. A Congress is a standing insurrection, and escapes the violence of accumulated grievance. As the globe keeps its identity by perpetual change, so our civil system by perpetual appeal to the people and accepting of its reforms."

Now, sir, when a people once free, are, by despotism, deprived of the right to express their will and judgment through the ballot, every true man owes it to freedom to rebel against such outrageous tyranny. History shows that it is easier to hurl the rooted mountain from its base than force the yoke of slavery upon men determined to be free. The ballot then, is the mighty instrument that educates, inspires, and pacifies the American people. It is its use, as Webster has somewhere said, that casts about us general enlightenment and manly independence. That noble privilege, I hold, ought never to be caged or restricted. To it are we indebted for this magnificent structure of American liberty. Unshackled and untrammeled, it will yet build for us the foremost State on earth; for that government, says Bentham, is the best which best promotes the morality, intelligence, and activity of the human beings composing the community.

These are the reasons then, why I regard the adoption or rejection of this section of so paramount importance. It, indeed, affects the rights and privileges of the citizen of to-day. Its omission imperils the liberty of posterity. Let some patrician Legislature rob the plebian of his political rights and the freedom of his child will soon be mangled into the serfdom of a slave. Property qualifications inevitably lead, first, to aristocracy, then to monarchy. Liberty once lost to a people is rarely ever regained. Republics fall through disease and stagnation; they never die of too much freedom.

"Let the American youth," says Story in his imperishable commentaries (pages 718-19,) "never forget that they possess a noble inheritance, bought by the toils and sufferings and blood of their ancestors, and capable, if wisely improved and faithfully guarded, of transmitting to their latest posterity, all the substantial blessings of life, the peaceful enjoyment of liberty, property, religion, and independence. The structure has been erected by architects of consummate skill and fidelity; its foundations are solid; its compartments are beautiful as well as useful; its arrangements are full of wisdom and order, and its defenses are impregnable from without. It has been reared for immortality—if the work of man may perfectly aspire to such a title. It may, nevertheless, perish in an hour by the folly, or corruption, or negligence of its only keepers, the people. Republics are created by the virtue, public spirit, and intelligence of the citizens; they fall when the wise are banished from the public councils, because they dare to be honest, and the profligate are rewarded because they flatter the people in order to destroy them."

The American revolution broke out, and the doctrine of the sovereignty of the people, nurtured in the bosoms of the colonists, took possession of the State. Battles were waged for that great doctrine; every class enlisted in its cause; disasters were met and victories were won for it, until now it stands as the law of laws. The noblest men of our country fought in its defense, and cheerfully died that it might live. Such is its history, and such has been its cost. Reverence for a principle so historic and precious ought to prevent and guard it against irreverent hands.

The American Republic is yet an experiment. One hundred years is but the childhood in the lifetime of a great nation. Unfortunately there are already many who have lost faith in the American system of government. From that un-American class has arisen that uncharitable demand for property qualifications. But, sir, let it not be forgotten that the ancient republics of Sparta, and Athens, and Rome, had property qualifications, and they each fell a victim to the tyranny of despotism. I tell you, sir, it is the very absence of those infamous tests, both of property and of religion, that sustains this free Government to-day. Once begin to raise up discriminations in deference to wealth, and you mar the beauty and mutilate the utility of the whole system—the American Republic will be a republic but in name.

This momentous problem ought, then, to be solved now and forever. No one who has at heart the peace and welfare and prosperity of California, will consent to leave so serious a question to the freaks and fancies of a fickle Legislature. To do so would be to jeopardize the magnificent future of our State. I want to see California in the vanguard of progress. I want to see her shine forth as the brightest star in the galaxy of forty bright States. Let this Convention, then, upon which are hanging the hopes and the fears of an anxious people, declare for all time to come, that within the great State of California no honest man is too poor for the highest citizenship, and no worthy citizen is too humble for the most exalted office.

MR. SWING. Mr. President: Having gone through with the amendments of the Committee of the Whole, I believe it is now acceptable to move the previous question.

Seconded by Messrs. Murphy, Reddy, Vacquerel, and Prouty.

THE PRESIDENT. The question is: Shall the main question be now put?

MR. McCALLUM. I would like to have the Chair state the effect of it.

THE PRESIDENT. If the Convention resolves to put the main question, it goes to the amendment pending, and to the whole article. If the Convention refuses to order the main question it goes over for twenty-four hours. If the Convention orders the main question it brings us to a direct vote, first, upon the amendment, and then the question will be, shall the article be engrossed and ordered to a second reading?

MR. SWING. I withdraw it temporarily.

MR. CROSS. That rule was amended by the Convention while the President was absent. It was amended on the third of January.

THE PRESIDENT. The Chair is not aware of any such amendments to the rules.

MR. CROSS. Yes, sir; an additional rule, on January second, as you will see by the record.

THE PRESIDENT. Yes, sir; I see it. Then the question will remain just as though the previous question had not been moved. The question now is upon the amendment of the gentleman from San Francisco, Mr. Freud.

MR. BEERSTECHER. Mr. President: I do not consider it necessary for me to add anything to the very able presentation of this proposition by my young colleague, Mr. Freud. The article of this committee, of course, covers the right of suffrage. But as to the right to hold office there is no real provision. Therefore, I hope the section will be adopted, and that this Convention will place itself squarely upon the record.

The ayes and noes were demanded by Messrs. Stedman, Wellin, Cross, Freud, and O'Sullivan.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Harrison,	Ringgold,
Barbour,	Heiskell,	Shoemaker,
Barry,	Herold,	Shurtleff,
Beerstecher,	Herrington,	Smith, of Santa Clara,
Bell,	Howard, of Mariposa,	Smith, of 4th District,
Blackmer,	Huestis,	Smith, of San Francisco,
Brown,	Hughey,	Soule,
Burt,	Hunter,	Stedman,
Charles,	Joyce,	Stevenson,
Condon,	Kenny,	Sweasey,
Cross,	Kleine,	Swenson,
Davis,	Larkin,	Thompson,
Dean,	Lavigne,	Tully,
Dowling,	McCallum,	Vacquerel,
Doyle,	McComas,	Walker, of Marin,
Dunlap,	McCoy,	Walker, of Tuolumne,
Estee,	Mills,	Waters,
Evey,	Morse,	Wellin,
Farrell,	Murphy,	West,
Filcher,	Nelson,	White,
Freud,	Neunaber,	Wilson, of Tehama,
Garvey,	O'Sullivan,	Wilson, of 1st District,
Gorman,	Pulliam,	Wyatt,
Grace,	Reddy,	Mr. President—74.
Hager,	Reynolds,	

NOES.

Andrews,	Hitchcock,	Prouty,
Boucher,	Holmes,	Reed,
Caples,	Howard, of Los Angeles,	Rhodes,
Casserly,	Inman,	Rolfe,
Chapman,	Jones,	Schomp,
Crouch,	Kelly,	Steele,
Dudley, of Solano,	Keyes,	Stuart,
Estey,	Lampson,	Swing,
Freeman,	Lewis,	Turner,
Glascock,	Mansfield,	Webster,
Gregg,	Martin, of Alameda,	Weller,
Harvey,	Moreland,	Winans—38.
Hilborn,	Ohleyer,	

RECONSIDERATIONS.

MR. McCALLUM. I move an amendment to section fifteen.

THE PRESIDENT. It is not in order now, if there be any additional sections to offer.

MR. BARRY. Mr. President: Yesterday the Convention adopted section seven, whereby the words between the words "actions" and "both" were stricken out. I now move to reconsider that vote.

THE PRESIDENT. The question is upon the motion to reconsider.

The ayes and noes were demanded by Messrs. Casserly, Wyatt, McComas, Charles, and Stuart.

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

AYES.

Barry,	Garvey,	Prouty,
Blackmer,	Gregg,	Reed,
Boucher,	Hager,	Reynolds,
Burt,	Hilborn,	Rhodes,
Caples,	Hitchcock,	Schomp,
Casserly,	Howard, of Los Angeles,	Smith, of 4th District,
Chapman,	Huestis,	Soule,
Charles,	Kelley,	Steele,
Crouch,	Lampson,	Stevenson,
Davis,	Lavigne,	Stuart,
Dowling,	Lewis,	Sweasey,
Dudley, of Solano,	Martin, of Alameda,	Turner,
Estee,	McComas,	Vacquerel,
Evey,	McCoy,	West,
Filcher,	Mills,	Wilson, of 1st District,
Freeman,	Moreland,	Winans—50.
Freud,	Neunaber,	

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NOES.

Andrews,	Holmes,	Reddy,
Ayers,	Howard, of Mariposa,	Ringgold,
Barbour,	Hughey,	Rolfe,
Beerstecher,	Hunter,	Shoemaker,
Bell,	Inman,	Shurtleff,
Brown,	Jones,	Smith, of San Francisco,
Condon,	Joyce,	Stedman,
Cross,	Kenny,	Swenson,
Dean,	Keyes,	Swing,
Doyle,	Kleine,	Thompson,
Dunlap,	Larkin,	Tully,
Estey,	Mansfield,	Walker, of Tuolumne,
Farrell,	McCallum,	Waters,
Glascock,	McNutt,	Webster,
Gorman,	Moffat,	Weller,
Grace,	Morse,	Wellin,
Harrison,	Murphy,	White,
Harvey,	Nelson,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wyatt,
Herold,	O'Sullivan,	Mr. President—62.
Herrington,	Pulliam,	

MR. WEBSTER. Mr. President: I now wish to add to section three as amended.

THE PRESIDENT. Section three cannot be amended any further. The Convention adopted a substitute for it.

MR. McCALLUM. Mr. President: I offer an amendment to section fifteen.

THE SECRETARY read:

"Insert after the word 'fraud,' in line two, 'or in civil actions for torts, except in cases of willful injury to person or property.'"

MR. McCALLUM. Mr. President: If the Convention desires to adjourn I will explain in a few words the object of this. Gentlemen will remember that, in the Committee of the Whole, Judge Shafter offered an amendment making this same point, as did also the Chairman of the Judiciary Committee. There was no difference of opinion in the Committee of the Whole as to the necessity of making this amendment. There was a difference of opinion as to the phraseology. I have drawn this up with considerable care and submitted it to the Chairman of the Judiciary Committee, and he is of the opinion that it is properly drafted, and I believe is willing to accept it. There was no argument made against the principle of this thing in Committee of the Whole.

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

Division was called for, and the amendment adopted, by a vote of 54 ayes to 28 noes.

MR. HOWARD, of Los Angeles. Mr. President: Would it be in order to move that the Convention now adopt this article as amended.

THE PRESIDENT. No, sir. If there be no further amendments the next question will be: Shall this article be engrossed and ordered to a second reading. That motion will come up after it is engrossed.

MR. WILSON of First District. Mr. President: I have an amendment to offer to section seventeen.

THE SECRETARY read:

"'Of the white race or of African descent,' to be inserted after the word 'foreigners,' in section seventeen."

Adopted.

RECONSIDERATION.

MR. JONES. Mr. President: I now move to reconsider the vote by which the Convention voted against the amendment offered by me to section two, of the article, to amend the section by inserting between the words "same" and "whenever," the following words, "by proceedings in accordance with law."

It has been impossible to reach the matter, and I now move to make it the special order for to-morrow morning. I have two such notices pending, and I wish to make the same motion as to both.

MR. WATERS. Mr. President: I move to indefinitely postpone the motion to reconsider.

Carried.

MR. JONES. Mr. President: I now move to reconsider the vote by which the Convention voted to strike out from line five of section six, the words "jail or."

MR. TULLY. I move to indefinitely postpone the motion to reconsider.

Carried.

MR. McCALLUM. Mr. President: I call attention to a motion that is to be made to-day. The gentleman from San Bernardino gave notice of a motion to reconsider certain amendments to Rule Twenty-four. It was made the special order for to-day, but by some oversight the Judge did not observe it. Will the Chair rule that the ayes and noes are to be called upon every section now, or only upon the article?

THE PRESIDENT. Only upon the article upon the final vote. The amendment is unnecessary to the Rule.

NOTICE.

MR. JONES. Mr. President: I wish to give notice.

THE SECRETARY read:

"I give notice that to-morrow, January twenty-ninth, I will move to reconsider the vote by which the amendment to section fourteen, offered by me to-day, in the following words, viz: 'nor shall the time or services of any person, except when held or under arrest for crime, be taken by virtue of any lawful writ, order, or process of any Court or Magistrate, without just compensation, to be fixed and provided for by law,' was rejected."

MR. TULLY. Mr. President: I move we adjourn.

Lost, by a vote of 51 ayes to 60 noes.

THE PRESIDENT. The question is: Shall the article be engrossed and called to a second reading?

MR. WILSON, of First District. Mr. President: I rise to a point of order. It is that, pending a motion to reconsider, the final vote cannot be taken on the whole article.

THE PRESIDENT. Not well taken.

MR. WILSON. I didn't believe it was, I only wanted the ruling of the Chair. [Laughter.]

The ayes and noes were demanded by Messrs. Howard of Los Angeles, Ayers, Beerstecher, Huestis, and O'Sullivan.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Hager,	Ohleyer,
Ayers,	Hale,	O'Sullivan,
Barbour,	Harrison,	Prouty,
Barry,	Harvey,	Pulliam,
Barton,	Heiskell,	Reddy,
Beerstecher,	Herold,	Reed,
Bell,	Herrington,	Rhodes,
Blackmer,	Hilborn,	Ringgold,
Boucher,	Hitchcock,	Rolfe,
Brown,	Holmes,	Schomp,
Burt,	Howard, of Los Angeles,	Shoemaker,
Caples,	Howard, of Mariposa,	Shurtleff,
Casserly,	Huestis,	Smith, of 4th District,
Chapman,	Hughey,	Smith, of San Francisco,
Charles,	Hunter,	Soule,
Condon,	Inman,	Stedman,
Cross,	Joyce,	Stevenson,
Crouch,	Kenny,	Stuart,
Davis,	Keyes,	Sweasey,
Dean,	Kleine,	Swenson,
Dowling,	Lampson,	Swing,
Doyle,	Larkin,	Thompson,
Dudley, of Solano,	Lavigne,	Tinnin,
Dunlap,	Lewis,	Tully,
Estee,	Mansfield,	Vacquerel,
Estey,	Martin, of Alameda,	Walker, of Tuolumne,
Evey,	McCallum,	Waters,
Farrell,	McComas,	Webster,
Filcher,	McCoy,	Wellin,
Freeman,	McNutt,	West,
Freud,	Moffat,	White,
Garvey,	Moreland,	Wilson, of Tehama,
Glascock,	Morse,	Winans,
Gorman,	Murphy,	Wyatt,
Grace,	Nelson,	Mr. President—107.
Gregg,	Neunaber,	

NOES.

Jones,	Reynolds,	Wilson, of 1st District—5.
Mills,	Weller,	

THE PRESIDENT. The article will go to the Committee on Engrossment.

ADJOURNMENT.

MR. JOYCE. Mr. President: I move we do now adjourn.

Carried.

And at five o'clock and thirty minutes P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND TWENTY-FOURTH DAY.

SACRAMENTO, Wednesday, January 29th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Dean,	Hilborn,
Ayers,	Dowling,	Hitchcock,
Barbour,	Doyle,	Holmes,
Barry,	Dudley, of Solano,	Howard, of Los Angeles,
Barton,	Estey,	Howard, of Mariposa,
Beerstecher,	Estee,	Huestis,
Belcher,	Evey,	Hughey,
Bell,	Farrell,	Hunter,
Biggs,	Filcher,	Inman,
Blackmer,	Freeman,	Jones,
Boucher,	Freud,	Joyce,
Brown,	Garvey,	Kelley,
Burt,	Glascock,	Kenny,
Caples,	Gorman,	Keyes,
Casserly,	Gregg,	Kleine,
Chapman,	Hager,	Laine,
Charles,	Hale,	Lampson,
Condon,	Harrison,	Larkin,
Cowden,	Harvey,	Larue,
Cross,	Heiskell,	Lavigne,
Crouch,	Herold,	Lewis,
Davis,	Herrington,	Lindow,

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Mansfield,	Reddy,	Thompson,
Martin, of Alameda,	Reed,	Tinnin,
Martin, of Santa Cruz,	Reynolds,	Townsend,
McCallum,	Rhodes,	Tully,
McComas,	Ringgold;	Turner,
McConnell,	Rolfe,	Tuttle,
McCoy,	Schell,	Vacquerel,
McFarland,	Schomp,	Van Voorhies,
McNutt,	Shafter,	Walker, of Marin,
Miller,	Shurtleff,	Walker, of Tuolumne,
Mills,	Smith, of Santa Clara,	Waters,
Moffat,	Smith, of 4th District,	Webster,
Moreland,	Smith, of San Francisco,	Weller,
Morse,	Soule,	Wellin,
Nason,	Stedman,	West,
Nelson,	Steele,	White,
Neunaber,	Stevenson,	Wilson, of Tehama,
Ohleyer,	Stuart,	Wilson, of 1st District,
O'Sullivan,	Sweasey,	Winans,
Prouty,	Swenson,	Wyatt,
Pulliam,	Swing,	Mr. President.

ABSENT.

Barnes,	Fawcett,	O'Donnell,
Berry,	Finney,	Overton,
Boggs,	Grace,	Porter,
Campbell,	Graves,	Shoemaker,
Dudley, of San Joaquin,	Hall,	Terry,
Dunlap,	Johnson,	Van Dyke,
Eagon,	Murphy,	Wickes.
Edgerton,	Noel,	

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

PETITION.

MR. McCONNELL presented the following petition, signed by a number of citizens of Sacramento County, asking the exemption of certain property from taxation:

To the Honorable J. P. Hoge, President, and to members of the Constitutional Convention:

GENTLEMEN: Your petitioners, citizens of the State of California, and residents of Sacramento County, most respectfully request your honorable body to exempt from taxation all property used exclusively for church purposes.

Laid on the table, to be considered with the article on revenue and taxation.

RESOLUTION.

MR. BLACKMER. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the several articles of the new Constitution, when passed by the Convention and ordered engrossed, be printed under the direction of the Committee on Reporting and Printing.

MR. BLACKMER. Mr. President: The article that was passed by the Convention yesterday was ordered to be engrossed. The Committee on Engrossment and Enrollment is at present somewhat dilapidated, owing to the absence of the chairman, the gentleman from Lake, Mr. Noel, and by a resolution, since we were authorized to elect a clerk of the Committee on Engrossment, the clerk has been discharged, so that we are at present without any efficient means of engrossing the article; and further, I think it would be much preferable to have the article printed, so that it will be placed upon the desks of members. We have perfected many of the sections, and it is desirable to see what condition the article is in at present. The article, as proposed to be engrossed, can be turned over to the Committee on Reporting and Printing, who are competent to read the proof, and see that it is perfect; and I think it will expedite matters very much to have it take that course.

MR. McCOMAS. Mr. President: It seems to me that it is hardly necessary to have this printed until it has gone to the Committee on Revision and Adjustment. I do not think it is necessary to incur all this expense until it is passed upon by the Committee on Revision.

MR. LARKIN. Mr. President: I think the resolution of the gentleman from San Diego is correct. It will expedite business and avoid extra expense. The Committee on Reporting and Printing being experts as proof readers, will examine the proof, correct any mistakes that may be made, and present it to the Convention, instead of having clerks attending to this matter. The work, as passed upon, will go directly to the printing office, under the Supervision of the Committee on Printing. I deem it the best and most economical plan we can adopt.

MR. BLACKMER. Mr. President: There is still another reason why this should be adopted. The Convention has no money with which to pay a clerk. He will be obliged to take certificates and discount them. The pay, as set down by this Convention, is five dollars per day. Gentlemen can figure out whether it is possible to obtain a clerk to do this work properly at what he would receive for it.

MR. REYNOLDS. Mr. President: I understand that the second reading has been had.

THE PRESIDENT. No, sir; it will be read a second time after it is engrossed.

The resolution was adopted.

PARDONING POWER.

THE PRESIDENT. The next measure on the file is the report in relation to the pardoning power. The Secretary will read the section as presented by the Committee of the Whole.

THE SECRETARY read:

"ARTICLE 5.

"SECTION 13. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been previously twice convicted of felony."

MR. BLACKMER. Mr. President: I send up an amendment.

THE SECRETARY read:

"Add to the section the following: 'Except when new evidence is discovered after conviction, establishing the innocence of the convicted party.'"

MR. BELCHER. Mr. President: I offer a substitute for the amendment.

THE SECRETARY read:

"Amend by adding: 'Unless upon the written recommendation of a majority of the Judges of the Supreme Court.'"

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: That there ought to be an amendment to the section seems to me very clear. This, as it stands, provides that no pardon shall be granted by the Governor in any case where the convict has been previously twice convicted of felony. Now it may happen—and both of these amendments contemplate that idea—that a man may be erroneously convicted a third time. It is true that when a man has been convicted once and sent to a State Prison, if that fact is known when he is charged with a new offense he is more easily convicted than he would be if he had never been to a State Prison. Let a man be indicted in any of these counties charged with some offense—highway robbery, or burglary—and let it be known that he has been once or twice before convicted of a similar offense, and it is very easy to convict him the third time. But if it be true that a man is convicted when he is not guilty, there ought to be a way to get him out. If he be not guilty of the offense of which he is charged, there ought to be a way, when that fact appears, of his being let out. Now, the gentleman from San Bernardino has provided that he may be pardoned, if new evidence appears tending to show that he is not guilty, but there is no way of testing how that fact shall be shown. It seems to me that it would be better, where such cases arise, to have somebody to whom that evidence can be submitted, and it seems to me that the evidence might best be submitted to the Judges of the Supreme Court; and if a majority of them say that the man ought to be pardoned, in view of the new facts elicited, then the Judges may recommend to the Governor, in writing, that the man be pardoned, because a majority of the Supreme Court will never sign a paper recommending the Governor to pardon, in a particular instance, unless there be something that clearly recommends him to the mercy of the Governor. There can be no doubt that there ought to be some provision. There may possibly be a case of a man being in prison after having been twice previously convicted who is not guilty of the offense for which he is last sentenced, and if it does appear that he is not guilty, there ought to be some means to let him out. As it stands, though it appear that he is as innocent as a babe unborn, if he has been twice convicted before, he must stay there, for neither the Legislature nor the Governor has power to turn him out. This ought to be amended. The question is whether you will take the amendment offered by the gentleman from San Diego, or the one drawn by me, or some other one. I think it would be better to have some tribunal to whom that evidence may be submitted, to determine whether a man is guilty or not, and that the Justices of the Supreme Court in this case would be the best tribunal to submit that question to. If a majority are satisfied that the man ought to be turned out, then they could make that recommendation to the Governor.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: With all due respect to the gentleman from Yuba, I am opposed to making the Judges of the Supreme Court doorkeepers to the pardoning chamber. Now it is possible, as Judge Belcher suggests, that an accused party might possibly be innocent, notwithstanding the fact that he had been twice before convicted of an infamous crime; but I submit, Mr. President, that it is an extremely improbable case. I think, upon general principles, there could be no great harm done if he was convicted the third time, because the two former convictions establish the fact that he is an enemy to society and a bad man, and it is of little consequence then whether he is sent to State Prison a third time on general principles or sent to the gallows, or wherever it may be most convenient. But what I object to is making the Judges of the Supreme Court doorkeepers to this pardoning chamber. It seems to me of all officers in the State they should be the last who should be harassed with applications for pardons. When this subject was up before the Committee of the Whole, and it was proposed to make the Judges of the Supreme Court ex officio members of the Boards of Pardons, I was honestly opposed to it for the reason that I thought that the Supreme Court ought to be kept clear of all such harassing demands upon their time, and attend to the business of their office. And here the proposition comes to this, that in cases of this character

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application must be first made to the Supreme Court. Now, it is conceded, and gentlemen of the profession on this floor have shown us, when this subject of the judicial department was under discussion, that the Supreme Court Judges were crowded with business, and that they did not have time to discharge the duties of their office. Hence, they ask an increase of the number, and that they might set in departments and in bank. But if they make this change proposed by Judge Belcher, it seems that there is no serious demand upon their time. In my judgment it would be detrimental to the cause of justice to impose upon them the onerous and, I think, unnecessary burden which is so foreign to the duties of their office.

Now, I admit that Judge Belcher ought to be a good Judge of this matter, having himself been upon the bench. I will admit, too, that my opinion is worth but little. Still, Mr. President, I cannot but think that, upon a more deliberate reflection, gentlemen, particularly gentlemen of the legal profession, will see the impropriety of imposing upon the Judges of the Supreme Court other foreign matters that would, in the very nature of things, distract their judgment, or take from them a portion of that time which should be devoted to the peculiar functions of their office. Now, in regard to the amendment offered by the gentleman from San Diego, while I object to it, the objection is not so serious. But I maintain that there is really no necessity for any change in this article upon the pardoning power, as adopted in the Committee of the Whole. It was discussed here for two or three days—thoroughly and amply discussed, and agreed upon, and I believe satisfies the views of the majority of the members. I hope that all amendments will be voted down, and that we will adhere to the action of the Committee of the Whole and adopt that action as the action of this Convention.

MR. WATERS. Mr. President: There is but one side to this question, I think. I move the previous question.

Seconded by Messrs. Hunter, Tully, Dunlap, and White.

MR. BLACKMER. I think it is but fair that I should have an opportunity to be heard——

MR. MCCALLUM. I ask——

MR. WATERS. I insist upon my motion. If the Convention do not want the previous question they need not order it.

The Convention refused to order the main question put, on a division, by a vote of 37 ayes to 62 noes.

MR. BLACKMER. Mr. Chairman: It seems to be the opinion——

THE PRESIDENT. The gentleman has already spoken once.

MR. BLACKMER. I was not aware of the fact that I had spoken. The chair is mistaken.

THE PRESIDENT. The gentleman spoke to the question when he introduced the amendment. The chair is not mistaken.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I hope that the amendment offered by the gentleman from Yuba will be adopted. It seems to me that the views taken by the gentleman from Sacramento, Mr. Caples, are not well taken. This amendment would not make the Supreme Court the doorkeepers of the pardoning power.

MR. CAPLES. Is the gentleman aware that there are some three, or four, or five hundred convicts in California, in the State Prisons, who have been convicted two, three, four, and a half dozen times?

MR. ANDREWS. I presume that is the case. That does not meet the suggestion made by the gentleman from Yuba where there might be exceptional cases in which it would be a great hardship and outrage that the pardoning power could not be exercised. The gentleman from Sacramento asserted that the amendment offered by the gentleman from Yuba would make the Supreme Court Judges doorkeepers to the pardoning power, but it only applies to these exceptional cases. I hope the amendment of the gentleman from Yuba will be adopted.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: After considerable investigation I have discovered that my speech was a silent one, and consequently I will now endeavor to make myself heard. Perhaps it was because there is so much confusion that I did not hear it. Now, sir, in regard to the amendment offered by the gentleman from Yuba, Judge Belcher, I have this to say, that it is in reality making the Supreme Court a Board of Pardons, and the Committee of the Whole refused to entertain that proposition. They decided that it was not advisable to institute a Board of Pardons, any member of which should be upon the Supreme Bench. That question was discussed here. I endeavored, as the Convention will remember, when this article was up, to make this provision apply to all pardons, and the Committee of the Whole voted it down. But this question, notwithstanding the understanding of the gentleman from Sacramento, Mr. Caples, in regard to the last clause, where persons had been twice convicted, was not discussed in Committee of the Whole. Now, sir, it is not improbable that a man who has been convicted twice will be convicted again wrongfully. In fact it is very probable that he may be convicted wrongfully a third time. While it may be true in law that the person charged is not prejudiced, it is not true in fact. A prejudice will exist when a person has been twice convicted that will influence to a certain extent his conviction a third time, when, perhaps, if it had been his first offense he would not have been convicted. There is that easier way of getting a conviction than upon the first offense.

Now, sir, as to the question whether it makes any difference or not in the case of a person having been convicted of a crime twice, whether he is innocent or not when he is convicted, if the gentleman from Sacramento can take that stand I am willing he should keep it. I do not wish to. If a person is innocent of the crime for which he has been convicted there should be no punishment, and we should leave the door open, so that he can be pardoned. I believe this is the only way to do it: that whenever evidence is discovered, after the conviction, establishing his innocence, that the evidence should be brought before the Governor upon this point as to whether there are some circumstances going to mitigate the case and warrant a pardon. The evidence now must be brought to him. He must be brought to see and believe that there is a wrong being done; that it would be better for the individual and community that he be pardoned. This evidence which proves his innocence may just as well be brought there, and he can just as well pass upon it. This confines it then to this single case, and it is more easy to decide these cases where they are decided upon the evidence than where the sympathy is to be worked upon. I believe this to be the best way, so that when a party has been convicted twice before, if his innocence is established by evidence, there shall be still a right in the Governor to pardon him.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I desire to say but one word in regard to the amendments which are now pending. The section as reported by the committee I think should be amended, because it puts it out of the power of any part of the government, or all the combined powers of the government, to relieve a man from imprisonment who has been twice convicted before, no matter under what circumstances he is imprisoned, or what new facts have been developed. I am opposed to any such iron clad provision as that, that any person can be imprisoned so as to be beyond the reach of all departments of government. Now persons may be convicted under such circumstances that the pardoning power would not relieve him if he were only convicted once. Now, after he has been convicted twice the same reasons might apply, and the pardoning power might, in its discretion, doubt whether he was convicted properly, and in view of some other reasons men of sense would say that the man ought to be pardoned, yet we have placed it out of the power of the officers to pardon him. It has been suggested to me by the gentleman from Sacramento, Mr. Freeman, that this case may occur. A man may be convicted of three offenses at the same term of Court. He may be convicted, say, of embezzling funds at different times, every one constituting an offense. Having been convicted of three offenses he is beyond the reach of the pardoning power. Now it certainly would be impolitic to establish a rule like that. I think the amendment proposed by Judge Belcher should be adopted. I see nothing in the objection that it is done on the recommendation of a majority of the Supreme Court. It does not make the Supreme Court the pardoning power at all. It merely is a restriction upon the power of the Governor. When the Supreme Court have recommended the Governor to exercise the pardoning power, after an examination of the case, he still has to exercise his judgment. The Supreme Court has no power to pardon; they recommend it to the Governor, but he is not compelled to act upon it. He is the pardoning power, and they are no branch of the pardoning power at all. They simply recommend. The Senate, when it sits to approve of the appointment of an officer by the President or the Governor, does not appoint. The President appoints, with the advice and consent of the Senate. In this case it is not as strong as that. They simply say, "we have examined the case and we think this man should be pardoned," and then the Governor is thrown upon his own judgment to say whether the man should be pardoned or not. I do not see why we should doubt the Supreme Court in a case of this kind. They are better able to judge whether there are any peculiar circumstances under which the man has been convicted which would make it a proper case for the interposition of executive clemency. For these reasons, I am in favor of the amendment as proposed by the gentleman from Yuba, Judge Belcher.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: If this section is to stand as reported by the Committee of the Whole, I think that will be a very proper amendment; but I have an amendment which was defeated in Committee of the Whole by only one or two votes, and if it should be adopted, would cover substantially the thing aimed at in this amendment. I propose to read it now for information, as I propose to offer it whenever it will be in order:

"Add after the word 'reprieve,' in line one, as follows: 'and the Governor, Chief Justice of the Supreme Court, and the Attorney-General, or a major part of them, of whom the Governor shall be one, shall have power to grant.'"

Then the section proceeds to state that they shall grant pardons, etc. This proposition was discussed at considerable length in Committee of the Whole, and I do not propose to invite a renewal of that discussion; nor do I propose at any time, in the Convention, to offer propositions here which have been defeated by any decided majority in the Committee of the Whole, because it would be a useless consumption of time. As to this particular proposition, I have hope that it may succeed, and I therefore propose to offer it whenever it will be in order. I may say while up, that it embraces what was reported by the Committee on Pardons in the first place, as they propose to add the Chief Justice to the pardoning power, the Governor being one. My colleague, Judge Campbell, proposed to insert "Attorney-General." My proposition was to make the three—the Governor, the Chief Justice, and the Attorney-General—comprise the pardoning power, and I took occasion to say at that time, that at least so far as we who come from the second county of the State are concerned, we were pledged to your political platforms, those of both parties, to vote in favor of a proposition, that there should be a commission, or Board, to have charge and control of the pardoning power. I state this now merely by way of explanation. I shall vote for the amendment of Judge Belcher; but if it should not prevail, I shall offer this. As to the clause which provides that a party twice before convicted of felony shall not be pardoned, it is wrong in principle, and ought not to be put in a Constitution. It is very easy to suppose a case where gross injustice might be done. I will vote to strike the whole of it out; but as the best that can be done in the present instance, I shall vote for the amendment offered by the gentleman from Yuba.

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MR. GRACE. Mr. President: When the proper time comes, I desire to submit a substitute for the whole section.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I trust we will adhere to the report of the Committee of the Whole. As to the amendment of the learned gentleman from Yuba, and also the amendment of the gentleman from San Diego, they will both be found mischievous in practice—utterly so. If adopted, they will destroy all responsibility in the matter of the exercise of the pardoning power. Now, sir, what is the amendment of the gentleman from Yuba? That a pardon shall be granted wherever a majority of the Judges of the Supreme Court recommend it. What is the effect of that? It is not a public and judicial act; it is not a public inquiry in Court; it is not a public examination, regularly; but each Judge is subjected to private solicitation by parties outside, and is to be run down by petitions, and the tears of women and children. That is not safe, sir. The safety consists in having the responsibility direct, and holding the Governor and his party responsible for a proper exercise of the power. Equally fatal would be the amendment of the gentleman from San Diego. It is to be granted on newly discovered evidence. The Governor is made a Court, practically, and grants a new trial, and reëxamines the whole case upon the merits, and decides as to the weight of the newly discovered evidence. If there is newly discovered evidence, the Court below will grant a new trial. If the Court below refuses, an appeal may be taken to the Supreme Court, and then it can be examined regularly, under the responsibility of the Court, and under the learning of the Court. A man being in the penitentiary does not prevent his being heard. If there is new evidence, he is entitled to a new trial, and will get it by a regular judicial inquiry, and the evidence will be produced where it can be scrutinized and examined. But how can that be the case if produced before the Governor? How is he to examine the effect of the new evidence upon the whole case, and whether a new trial ought to be granted, or whether a pardon ought to be extended on the alleged discovery of new evidence? It cannot result otherwise than in abuses; nor is there any necessity for it. If a man is convicted, and it is shown to the Governor, from newly discovered evidence, that he has been wrongfully convicted, as the law now stands, and as it is proposed in this report, the Governor will still have a right to grant a pardon. I am in favor of the report as it stands, because there is some responsibility in it. The moment you divide it out with the Judges of the Supreme Court, all responsibility ceases. I did not favor the latter clause of the report, that pardon should be withheld from a man because he has been twice convicted before. But I do not see that it will work much hardship. I am in favor of the report as it now stands, and I hope it will be adopted. I do not want to discourage gentlemen who desire to make a large reputation by small amendments. But I think the safe thing is to adhere to the report of the Committee of the Whole.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I am not in favor of prohibiting a pardon in any case where the party has been previously twice convicted. A person may be convicted twice or thrice at the same term of Court. That is, there may be three or four indictments, and he may be tried on them, and there may be two or three convictions. Take the case of Duncan, who has recently been tried in San Francisco. He was indicted upon eight or ten charges, and has not been convicted. But suppose there had been a conviction on three or four indictments at that term, then in that case, if a presentation was made for his pardon, he would come up as a person who had been twice or thrice previously convicted. Yet it would be one offense, or crimes growing out of one offense; that is, a succession of offenses. Now, the pardoning power is nothing more than an arrest of the legal administration of justice. How often should we arrest the legal administration of justice, and when, is the question which presents itself here. Why, we might say, if a man was convicted according to the law, and punished according to the law, there should be no arrest of the administration of justice, because that would be an infraction upon the law itself. I do not think myself that the pardoning power should be exercised to the extent that it is in this State and in other States, because it has a tendency to create an impression in the community that if a man should be convicted there is a possibility of his being pardoned. But in a case where a person has been convicted twice, or thrice, and so on, a case may arise where the pardoning power should be exercised just as much as in other cases. If I had a chance to offer an amendment I would put it in this shape: "No pardon shall be granted to any person previously twice convicted of felony, unless on the recommendation, and with the approval of a major part of all the members of the State Senate." I would prefer it in that way rather than to resort to the Supreme Court. Now, the Judges of the Supreme Court are exercising judicial powers. I do not think they should be importuned constantly by parties seeking pardons for their friends, and interfered with in the performance of their judicial functions, to turn their attention towards the pardoning power. In some of the States the Senate have entire control. It is a political body to a certain extent. They are more likely to be conversant with the case as they come from every portion of the State. If I had my way about this whole matter I would require that a pardon should be granted on the recommendation of the Governor with the approval of a majority vote of the Senate, and I would have the Senate meet once, twice, or three times a year for that purpose; that the Governor may call the Senate together as a Pardoning Board. I think it would be a better system. The Governor is importuned as we all know, and in a great many cases, in all probability, pardons are granted where they would not be if they had a Board to act upon it deliberately. I oppose the amendment offered by Judge Belcher upon these grounds. I would rather leave it, as I say, to a vote of a majority of the Senate, on the recommendation of the Governor, and have the Governor call the Senate together for that purpose whenever he may see fit.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: As the Chairman of the committee, of course, I can say that all these propositions were passed upon by the committee and partly by the Convention itself in Committee of the Whole. Where the pardoning power should be lodged is a question foreign to the specific amendments proposed here. It is very apparent that after a man has been twice convicted, in the opinion of the convention he ought not to be pardoned except in the exceptional case of his innocence having been demonstrated, and if it is so demonstrated he ought to be pardoned. The question is who shall decide? I am willing to leave it to the Govenor. I would be equally willing to leave it to the Supreme Court. There is some weight in the argument that it should be left to a judicial mind. I am inclined to the opinion that the Judges of the Supreme Court are the most competent tribunal, and the one to which this question could be most safely left. They must recommend to the executive and he pardon. It is said that a new trial may be had. It will be seen that if that is true, which I do not undertake to controvert at all, it would be a very inefficient remedy. The Judge before whom the case was tried may be dead or out of office. If a new trial is to be had the party will suffer by being unable to get his witnesses together again. But the Judges of the Supreme Court could take up the whole record of the case as tried before just exactly as well as a jury could, and better too, and be more likely to arrive at a correct result. It strikes me that it would be quite as well to leave this matter to a majority of the Judges of the Supreme Court to advise the Governor as any other way.

MR. HOWARD. This amendment does not submit it to the Court; it submits it to a majority of the Judges to be run down outside of Court.

MR. SHAFTER. If it is objectionable on that account, it can be very easily provided that the petition shall be made to the Supreme Court, and that that Court shall decide. That will be a majority of the Judges. As regards the suggestion of Mr. McCallum, that has been already settled by the Convention. One thing is certain—if a man can prove his innocence he ought not to be confined in the State Prison. It is possible that there might be some exceptional cases where a new trial would be desirable, but I think in the most cases it would be better to leave it to the Judges of the Supreme Court.

MR. McCALLUM. Are you aware of any State where the Governor and Judges of the Supreme Court have this power?

MR. SHAFTER. In Delaware, I think it is so.

MR. McCONNELL. I move the previous question.

Seconded by Messrs. Waters, Murphy, Howard of Los Angeles, and Hunter.

The main question was ordered, on a division, by a vote of 70 ayes to 40 noes.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Yuba, Mr. Belcher.

The ayes and noes were demanded by Messrs. Casserly, Condon, Joyce, Grace, and Ohleyer.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Herold,	Ringgold,
Ayers,	Herrington,	Rolfe,
Barbour,	Hitchcock,	Schell,
Barry,	Howard, of Mariposa,	Schomp,
Beerstecher,	Hughey,	Shafter,
Belcher,	Jones,	Shurtleff,
Bell,	Joyce,	Smith, of 4th District,
Biggs,	Kelley,	Smith, of San Francisco,
Boucher,	Kenny,	Soule,
Brown,	Kleine,	Stedman,
Casserly,	Lampson,	Steele,
Chapman,	Larue,	Stevenson,
Charles,	Lavigne,	Stuart,
Condon,	Lewis,	Sweasey,
Cowden,	Lindow,	Swing,
Cross,	Martin, of Alameda,	Thompson,
Davis,	Martin, of Santa Cruz,	Townsend,
Dowling,	McCallum,	Turner,
Doyle,	McConnell,	Tuttle,
Dudley, of Solano,	McCoy,	Vacquerel,
Dunlap,	McNutt,	Van Voorhies,
Estee,	Miller,	Walker, of Tuolumne,
Estey,	Mills,	Waters,
Farrell,	Moreland,	Webster,
Filcher,	Morse,	Weller,
Freeman,	Nason,	Wellin,
Freud,	Nelson,	West,
Garvey,	Neunaber,	White,
Glascock,	Ohleyer,	Wilson, of Tehama,
Gorman,	O'Sullivan,	Wilson, of 1st District,
Grace,	Pulliam,	Winans,
Gregg,	Reed,	Wyatt,
Harrison,	Rhodes,	Mr. President—100.
Harvey,		

NOES.

Barton,	Dean,	Hilborn,
Blackmer,	Evey,	Holmes,
Burt,	Hager,	Howard, of Los Angeles,
Caples,	Hale,	Hunter,
Crouch,	Heiskell,	Inman,

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Keyes,	McComas,	Smith, of Santa Clara,
Laine,	McFarland,	Swenson,
Larkin,	Murphy,	Tinnin,
Mansfield,	Prouty,	Tully—27.

The amendment as amended was adopted.

THE CHAIRMAN. The question is: Shall this article be engrossed and read a second time?

Carried.

NOTICE.

MR. MCCALLUM. I give notice that I will, on to-morrow, move a reconsideration of the vote by which the Convention adopted the article on pardoning power and ordered it to be engrossed and read a second time, for the purpose of amending said article so that the same shall embrace the following amendment:

"Insert after the word 'reprieve,' in line one, and before the word 'pardons,' in line two, as follows: 'And the Governor, the Chief Justice of the Supreme Court, and the Attorney-General, or a major part of them, of whom the Governor shall be one, shall have power to grant.'"

EXECUTIVE DEPARTMENT.

THE PRESIDENT. The next measure on the file is the report of the Committee of the Whole on the executive department. The Secretary will read the amendments in order as proposed by the Committee of the Whole.

MR. AYERS. I rise to a point of order. These amendments do not seem to be printed.

THE PRESIDENT. The amended report is printed with the amendments in. The original section is not printed, but the amendments are all in.

THE SECRETARY read:

"In section three, strike out 'thirty' and insert 'twenty-five,' in line three."

Concurred in.

THE SECRETARY read:

"In section eighteen, strike out 'fair' and insert 'correct,' in line three."

Concurred in.

THE SECRETARY read:

"In section nineteen, add after 'Controller,' in line nine, 'Attorney-General and Surveyor-General;' and strike out, in lines sixteen and seventeen, 'it shall, by law, fix the compensation of the Attorney-General and the Surveyor-General, and.'"

MR. MCFARLAND. Mr. President: I hope that this amendment will not prevail. Now, sir, the office of Lieutenant-Governor is the second office of importance in this State. The Lieutenant-Governor is liable under many contingencies to be Governor. It is a position that ought to be sought after by the best men of the State, and yet you prevent the Legislature from giving him any more salary whatever, except an increased per diem for the month or two that the Legislature sits. It is a matter that ought to be left to the Legislature, but here you provide positively that he shall receive the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature. I hope the amendment will not be concurred in.

MR. WHITE. Mr. President: I hope the amendment will be concurred in. A man who is in that position, if he gets to be Governor, will have the same salary as the Governor has, and while he does nothing, he should get no pay. I trust, that as a matter of economy, the matter will be left just as it was amended by the Committee of the Whole.

THE PRESIDENT. The question is: Will the Convention concur in the amendment of the Committee of the Whole?

The report of the Committee of the Whole was concurred in, on a division, by a vote of 78 ayes to 16 noes.

THE SECRETARY read:

"In line sixteen, section nineteen, add after the word 'Constitution' the words, 'no salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding eighteen hundred dollars per annum.'"

Concurred in.

THE SECRETARY read:

"In line nine, section nineteen, add after the word 'Assembly' the words, 'to be allowed only during the session of the Legislature.'"

Concurred in.

MR. MCFARLAND. I have an amendment to section nineteen.

THE PRESIDENT. It is first in order to move separate sections. If none are offered, any portion of the report can be amended.

MR. MCFARLAND. I offer an amendment to section nineteen.

THE SECRETARY read:

"Amend section nineteen by striking out the word 'three,' in line eleven, and inserting in lieu thereof the word 'four.'"

MR. MCFARLAND. Mr. President: The object of that amendment is to give the Convention an opportunity to change their minds upon this matter, as they have done upon a great many others. The word "three" fixes the salary of all the State officers here, except the Governor, at three thousand dollars a year. This amendment proposes to make it four thousand dollars.

The amendment was lost.

MR. TINNIN. I desire to offer an amendment to section nineteen.

THE SECRETARY read:

"Amend section nineteen, in line nineteen; after the word 'annum' insert the words, 'for each clerk employed.'"

MR. TINNIN. Mr. President: As that reads now it might be construed that, for instance, the State Controller would be compelled to run his office for one thousand six hundred dollars per annum for clerk hire. It is open to that construction, and this is for the purpose of explaining it more fully.

The amendment was adopted.

MR. BELCHER. Mr. President: I offer an amendment to section nineteen.

THE SECRETARY read:

"Amend line eighteen by striking out 'sixteen' and inserting 'eighteen.'"

MR. BELCHER. Mr. President: It seem to me that for clerks, such as are required in the State offices, there should be no limit to less than one hundred and fifty dollars a month. Most of these men have families. At least men ought to be able to take these positions who do have families. Now, with a family, a man cannot live upon less than one hundred and fifty dollars per month, respectably. The Legislature should not be prohibited from giving at least one hundred and fifty dollars a month.

MR. MCFARLAND. Mr. President: I am opposed to the amendment in the interest of economy. [Laughter.] Now, sir, there are plenty of men that can be had for fifty dollars a month. One thousand six hundred dollars a year seems to me to be a very large sum. After you have cut down the salary of the Controller and all these officers to three thousand dollars, you propose now to allow the Controller, under the disguise of clerks, to run up the expenses of the office to enormous sums. You do not undertake to limit the number. The Legislature may allow them twenty clerks. They can go to work and hire clerks for seventy-five dollars a month, and make seventy-five dollars out of each man. [Laughter.] Why not fix it positively—say that they shall not have more than one or two, or one and a half, or somewhere along there? But to make the people understand that we are in the interest of economy, after cutting down the salary of a State officer to three thousand dollars you must not allow him to have clerks at one thousand eight hundred dollars a year.

MR. LARKIN. I am satisfied that the gentleman is in favor of the amendment or else he would not have spoken against it.

MR. MCCALLUM. Mr. President: The gentleman, in Committee of the Whole, opposed this one thousand six hundred dollar salary. Now, he opposes an amendment to raise it, and has given no reason for this change of spirit. I think, perhaps, that he hopes by opposing it he may succeed in having the amendment adopted. I confess that I think that the amendment offered by the gentleman from Yuba is just; that in the Constitution we ought not to fix a limit at less than one hundred and fifty dollars a month or one thousand eight hundred dollars a year.

MR. TULLY. Mr. President: I hope that this amendment will prevail, though I have not much hope that it will, knowing that certain members here never change their vote upon a principle unless instructed by their constituents. I therefore move the previous question.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Yuba, Mr. Belcher.

MR. WEST. Mr. President: I offer an amendment to section nineteen.

THE SECRETARY read:

"Amend section nineteen by striking out the word 'six,' in line seven, and insert the word 'five.'"

MR. WEST. Mr. President: I hope this amendment will prevail. As this matter was discussed considerably in Committee of the Whole, I now call for the ayes and noes on this amendment.

The ayes and noes were also demanded by Messrs. Keyes, Condon, Evey, and Mason.

The roll was called, and the amendment was rejected by the following vote:

AYES.

Bell,	Hitchcock,	O'Sullivan,
Boucher,	Hunter,	Prouty,
Caples,	Joyce,	Reynolds,
Chapman,	Kelley,	Schomp,
Charles,	Kenny,	Smith, of Santa Clara,
Condon,	Keyes,	Smith, of San Francisco,
Crouch,	Kleine,	Soule,
Dean,	Laine,	Stedman,
Doyle,	Larkin,	Steele,
Dudley, of Solano,	Lavigne,	Sweasey,
Evey,	Lindow,	Thompson,
Farrell,	McComas,	Tuttle,
Filcher,	McConnell,	Webster,
Freud,	Moffat,	Weller,
Gorman,	Moreland,	Wellin,
Grace,	Morse,	West,
Hager,	Nason,	White,
Harrison,	Nelson,	Wilson, of Tehama—56.
Heiskell,	Neunaber,	

NOES.

Andrews,	Estee,	Hughey,
Ayers,	Estey,	Inman,
Barry,	Freeman,	Jones,
Barton,	Garvey,	Lampson,
Belcher,	Glascock,	Larue,
Biggs,	Gregg,	Lewis,
Blackmer,	Hale,	Mansfield,
Brown,	Harvey,	Martin, of Santa Cruz,
Burt,	Herrington,	McCallum,
Casserly,	Hilborn,	McCoy,
Cowden,	Holmes,	McFarland,
Cross,	Howard, of Los Angeles,	McNutt,
Davis,	Howard, of Mariposa,	Miller,
Dunlap,	Huestis,	Mills,

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Murphy,	Shurtleff,	Vacquerel,
Ohleyer,	Smith, of 4th District,	Van Voorhies,
Pulliam,	Stevenson,	Walker, of Marin,
Reed,	Swenson,	Walker, of Tuolumne,
Rhodes,	Swing,	Waters,
Ringgold,	Tinnin,	Wilson, of 1st District,
Rolfe,	Townsend,	Winans,
Schell,	Tully,	Wyatt,
Shafter,	Turner,	Mr. President—69.

MR. JONES. Mr. President: I offer an additional section.

THE SECRETARY read:

"SEC. 20. The Governor shall not, during his term of office, be eligible as a Senator of this State to the Senate of the United States."

MR. HOWARD, of Los Angeles. Mr. President: I would like to ask the gentleman by what authority the State fixes the qualifications of the Senators of the United States. I think it has been decided about forty times that we had no such right.

MR. CROSS. Mr. President: I do not know what General Howard has just been saying, but as I understand it, he claims that this would be fixing the qualifications of Senators of the United States, and that the State has no control over it.

MR. HOWARD, of Los Angeles. That is what I said, and it has been so repeatedly decided in the Senate of the United States.

MR. JONES. Mr. President: It has been suggested to me that I ought to have stricken out the words, "of this State," so that it will read, "the Governor shall not be eligible as a Senator to the Senate of the United States."

THE PRESIDENT. If there be no objection the gentleman can correct his amendment.

MR. WILSON, of First District. Mr. President: I rise to a point of order. There can be no quorum voting on this amendment, because gentlemen who are candidates for Governor cannot vote, and we will have no quorum.

[Laughter.]

MR. McCALLUM. Mr. President: As the section stands I concede the full force of the argument that the State cannot do anything about it. The Senate of the United States decides upon the eligibility of its members; but we have a right to say in the Constitution that the Governor shall not be elected a United States Senator during his term of office, and to say the least, the Legislature that would do it would be guilty of moral perjury, having sworn to support the Constitution of the State. I move that as an amendment—I move to insert in place of "be eligible," the words "be elected."

MR. JONES. I accept the amendment. I will revise the section.

MR. HOWARD, of Los Angeles. That is subject to the same objection.

MR. McCALLUM. In answer to the remarks just made, I will ask the gentleman from Los Angeles, suppose it was worded in this way, that the Legislature shall not elect a Governor to the United States Senate during his term of office, if that would not be a mandatory provision in the Constitution preventing it?

MR. HOWARD. No, sir. It is a distinction between tweedle dum and tweedle dee. If the Constitution of the United States leaves it to the United States Senate, it is perfectly clear that the State cannot add to or take away from it. I admit that this is a vicious practice, but we cannot correct it in this way.

MR. TOWNSEND. I hope that the amendment will not be adopted. The State ought to be allowed to elect her best citizens to the Senate of the United States.

MR. ESTEE. I hope it will be adopted, because it is a declaration of State rights.

MR. DUDLEY, of Solano. Mr. President: I hope the amendment will be adopted. It is well known that the most corrupting thing in State politics is the election of United States Senator, and it is ten fold more corrupting when the Governor aspires to that position. It has been the custom in the past by most everybody who has been elected to the office of Governor, to make it a stepping-stone to the United States Senate. Immediately upon accession to the gubernatorial chair, they have commenced laying the pipes and using all the influence of their executive station to secure the position of United States Senator. I understand the objections that are urged. But I understand that this will be placed in the Constitution, and will be a moral obligation to the members of the Legislature of the State of California, and I am satisfied that they will obey it.

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

Seconded by Messrs. Murphy, Dean, Dunlap, and Wyatt.

The main question was ordered.

THE PRESIDENT. The Secretary will read the amendment as now proposed by the gentleman from Mariposa, Mr. Jones.

THE SECRETARY read:

"SEC. 20. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States."

Upon the adoption of the amendment of Mr. Jones, the ayes and noes were demanded by Messrs. Ayers, Dudley, Keyes, Farrell, and Gorman.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Condon,	Farrell,
Ayers,	Davis,	Freud,
Barton,	Dowling,	Gorman,
Bell,	Doyle,	Grace,
Biggs,	Dudley, of Solano,	Hager,
Boucher,	Estee,	Hale,
Burt,	Estey,	Harrison,
Casserly,	Evey,	Heiskell,
Herold,	Lindow,	Stevenson,
Herrington,	Mansfield,	Stuart,
Hilborn,	Martin, of Alameda,	Sweasey,
Hitchcock,	Martin, of Santa Cruz,	Swenson,
Holmes,	McCallum,	Swing,
Huestis,	McComas,	Thompson,
Hughey,	Mills,	Tinnin,
Hunter,	Moreland,	Tuttle,
Inman,	Nason,	Van Voorhies,
Jones,	Ohleyer,	Walker, of Marin,
Joyce,	O'Sullivan,	Webster,
Kelley,	Prouty,	Weller,
Kenny,	Reynolds,	Wellin,
Keyes,	Rhodes,	West,
Kleine,	Schomp,	White,
Laine,	Shurtleff,	Wilson, of Tehama,
Lampson,	Smith, of Santa Clara,	Wilson, of 1st District,
Larkin,	Smith, of San Francisco.	Winans,
Larue,	Stedman,	Mr. President—83.
Lavigne,	Steele,	

NOES.

Barry,	Glascock,	Neunaber,
Belcher,	Gregg,	Pulliam,
Blackmer,	Harvey,	Reed,
Brown,	Howard, of Los Angeles,	Ringgold,
Caples,	Howard, of Mariposa,	Rolfe,
Chapman,	Lewis,	Schell,
Charles,	McConnell,	Shafter,
Cowden,	McCoy,	Smith, of 4th District,
Cross,	McFarland,	Soule,
Crouch,	McNutt,	Townsend,
Dean,	Miller,	Turner,
Dunlap,	Moffat,	Vacquerel,
Filcher,	Morse,	Walker, of Tuolumne,
Freeman,	Murphy,	Waters,
Garvey,	Nelson,	Wyatt—45.

THE PRESIDENT. The question now is: Shall this article be engrossed and read a second time?

Carried.

CORPORATIONS.

THE PRESIDENT. The next measure on the file is the report of the Committee of the Whole on corporations other than municipal. The Secretary will read the amendments recommended by the Committee of the Whole in order.

THE SECRETARY read the amendments proposed by the Committee of the Whole.

THE PRESIDENT. The Secretary will read the first amendment.

THE SECRETARY read:

"Amend the second clause of section one so as to read as follows: 'All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time, or repealed.'"

MR. McFARLAND. Mr. President: I offer an amendment to the amendment offered by the Committee of the Whole.

THE SECRETARY read:

"Amend section one, as amended by Committee of the Whole, by adding thereto as follows: 'But no vested rights shall be destroyed by the altering or repealing of such laws.'"

The amendment was rejected.

The amendment reported by the Committee of the Whole concurred in.

The Secretary read the amendments offered by Messrs. Webster and Terry, and adopted in Committee of the Whole as follows:

"Amend section three to read as follows: 'Sec. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The Directors or Trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association, during the term of office of such Director or Trustee.'"

MR. ESTEE. Mr. President: I offer an amendment to section three.

THE SECRETARY read:

"Strike out the words 'and stockholders.'"

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: The original amendment reads as follows:

"SEC. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The Directors or Trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association during the term of office of such Director or Trustee."

Now, I propose to amend it by striking out of the second clause the words "and stockholders," so that it will read: "The President or Trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors for all moneys." The reason of that is this, that so far as my experience goes, and I think it is the experience

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of all, the stockholders of corporations have usually done the combining; that, as a rule, the stockholders pool the stock and control the whole action of the corporation; that they always elect the officers or Directors, and that the Directors are their instruments, right under their control.

MR. TINNIN. What protection would a minority have?

MR. ESTEE. That is provided for in this article. There is a system of cumulative voting in electing the officers of a corporation. The object here is to protect the creditor, not the stockholder. There are savings banks with stockholders. There are savings banks organized under the statute, where there are stockholders and where there is stock. But there are some that are mutual institutions entirely, and it would not then apply. It would not apply to savings banks at all, except in those cases where they have stockholders. The great danger of savings banks has been in those institutions where they have stockholders and have reserve funds for the benefit of those stockholders, not in the mutual savings banks, but in those institutions where it is the interest of the stockholders to pay the stock a large amount from the income of other people's money that should be distributed to the depositors.

MR. DOWLING. Who should be the directors and stockholders of a corporation?

MR. ESTEE. A man should be director who gets the most votes, and a man stockholder who is a subscriber and pays in his stock.

MR. DOWLING. Who should be the directors and trustees of a corporation by right?

MR. ESTEE. Does my friend make a distinction between a trustee and a director? It is a different name for the same thing.

MR. DOWLING. If the stockholders are the directors or trustees, don't you think that it would place the institution on a safer basis?

MR. ESTEE. I would state that a man cannot be a director unless he is a stockholder. Then he is liable to himself for his stealing. He should be liable to the creditors. I will state here that in my judgment there is no reason, and I do not think there can be any good reason given for holding the agents of a corporation responsible to their principals for what they do. What we are interested in, and what the community is interested in, is to protect those who have not the means of knowing the ingoings and outcomings of that institution. It is the creditors of the institution that we should protect, and for that reason I propose this amendment. The Convention of course will do as it likes.

MR. WILSON, of First District. Is an amendment to Judge Terry's amendment now in order?

MR. PRESIDENT: It is not in order now.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I am opposed to striking out that word stockholders. I have always been of the opinion, and am yet, that the directors of a private corporation ought to be responsible for their employés, the men that they put into place. They have the control of the affairs, they appoint all the officers, they know all about them; they can inquire about them, and why should they not be responsible. Now, how is it in regard to our municipal corporations. An officer is elected to a position there, and he is held responsible for all his deputies and all their acts. If they embezzle the funds he is held responsible for them. In regard to the federal officers throughout the country they are responsible for all the officers appointed by them. Take our county officers in the city of San Francisco, they are all held responsible for the acts of their employés, and would be liable on their bonds. These directors can require bonds of their employés if they choose. These embezzlements are going on all the time. Now take the bank of California, take the French Bank, take the Duncan Pioneer Bank. If these officers who were put in there as Directors—as figure heads—were responsible for the men that were placed there these corporations would not have been swindled. The Cashier of the Bank of California had unlimited control of the funds and when he failed there was nothing left. The Cashier had taken it all. The Directors knew it; the managing men knew about it; their Executive Committee had the control. Take the case of the French Bank. Does any one suppose that if the Directors had been personally responsible that anything would have been abstracted from that bank. Now a man is not bound to be a Director of a corporation in an association, or a Director of a corporation. It is a voluntary act. If he takes the position knowing that he is responsible for the men employed there he will see that honest men go there, or else he will not take the place. I would not take it under the circumstances, perhaps, unless I had the control of the appointing power. If a man was put in there that I thought was not a responsible man, I would resign because I would not be placed in a position where I would be liable to suffer by his acts. I hope, therefore, that this proposition to strike out the word stockholders will not prevail. The Directors should be responsible for the malfeasance of the men that are placed there. If they were placed there against their wishes that would be another thing, but they are not.

MR. ESTEE. Under this amendment should they be placed there against their will would not the Director be responsible?

MR. HAGER. A Director would resign in that case. If an improper person is placed there, the minute that a Director finds that he is not a proper person, he could resign his position. He could retire and report to the stockholders that there is something wrong going on in that institution. I am satisfied that there should be something done with regard to these corporations, and the management of them. Take our mining affairs. Why, it is a disgrace to the civilization of the age. This is the rule in the Federal, State, and municipal governments, and if it is good in a municipal corporation, why should it not be in a private corporation. I would like my friend to answer the question. If the Treasurer in San Francisco is responsible for the men that he places there, why should not the Directors of a private corporation be responsible? Is there any good reason for it?

MR. ESTEE. That is not the effect of it. The people elect one man, and the law provides he shall give a bond. I want to ask the gentleman if this amendment stands as it is, will it not result in driving all good men out of the directorship of these institutions?

MR. HAGER. If you should break them up it would not do much harm.

MR. ESTEE. What will you do with your gas company?

MR. HAGER. If we cannot have good men, do not let us have any men. If the Treasurer of San Francisco is responsible, the State Treasurer is responsible, why should not these men be? The Treasurer necessarily employs assistants, but he is responsible and he must take care that his assistants indemnify him by some bond or otherwise. The Directors ought to take care that proper men are placed there. They have a right to demand security of any one they employ.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope the amendment will not prevail. That is one of the main pillars of this edifice. It is said in argument here that we are making stockholders responsible to themselves. Well, so we are to the amount of stock that a Director or Trustee may hold, but when it comes up they are generally found not to own any stock to speak of, so that the amount of responsibility that a stockholder will bear to himself amounts to very little. But, sir, the proposition is this: We desire to make Directors and Trustees responsible to the stockholders, because the stockholders are the very first class to be robbed by the management. We seek by this amendment to make them responsible to the creditors and stockholders alike. Perhaps there may be no creditors, and yet the corporation may be run into a condition of bankruptcy. Stockholders may be ruined. Hence I hope that the amendment will not prevail, and I am astonished that the gentleman who propose to make the Directors of the corporation liable to the creditors, are not likewise willing to make them liable to the stockholders. Why, the stockholders are the very first ones robbed. They are robbed first, last, and all the time. Creditors generally manage to take care of themselves. The first act of a mining corporation is to levy an assessment and then misappropriate the funds.

MR. ESTEE. Under our statute now a majority of the stockholders can remove a Director any time.

MR. REYNOLDS. Where is the protection of the minority? There is where all the skulduggery comes in. They levy an assessment, and they collect it of the minority stockholders, and the minority draw checks, that are not to be presented, in payment of their assessments. Why, sir, if you had the power to set on foot a committee of investigation, you could find one hundred millions of assessments stowed away in the offices of these companies in the City of San Francisco, of checks drawn by the majority of the stockholders, that have never been presented, and were never intended to be presented; and they go on collecting assessments of the other stockholders, nevertheless. It is them that we desire to protect. Mr. President, about these days stockholders are becoming troublesome in the City of San Francisco. They are wont to set on foot investigations, and within the last six months there has never been a time that there has not been three or four companies of dissatified stockholders holding unsuccessful meetings, and making unsuccessful inquiries and investigations into the affairs of the Directors; but at last they find, generally, that there is nobody responsible. The Directors hold ten or a dozen shares of stock, and the time is frittered away, and their rights are gone. It will do no harm to make them responsible. There is no argument here in opposition to this proposition to make them responsible. It is no argument to say that you are making them responsible to themselves to the extent of their stock. So they are, and they ought to be; but they ought to be responsible to all the others. We want the section just as it stands.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: It appears to me that the proposition to strike out of the section, as reported, these words, is nothing more nor less than a bold, glaring attempt to permit the continued robbery of the people by those who are intrusted with funds which are placed in their hands, and under their control. The whole object and intent of this section, although it refers to all corporations, is aimed at those who are in charge, in trust of the funds of the people, put in their hands for the purpose of honestly administering that trust. Now, sir, what are they? What are your depositors in the savings banks? They are stockholders receiving their dividends, and the gentleman says that they have power to step in and remove the Directors. When do they have that opportunity? Why, sir, it is after the bank fails. That is when they find it out. That is when they meet. That is when the investigation is made. It is a plain proposition of fraud on the face of it to say that two, or three, or five depositors of a savings bank are supposed to be seeing the proceedings of that institution, watching every day, and calling meetings to displace Directors. It never happens until after the fraud is consummated. It is said that these good kind capitalists, these prudent men, won't go into these institutions, and won't accept this position. If that is the logical conclusion, I say let them go and let them disappear from the face of the earth. This country won't suffer. If they cannot be honest and go into these positions, let them go. The money will then go where it ought to go, into the development of the country instead of being put out for interest. It will go into manufactories. If you cannot stick it into a savings bank, and if you cannot get these eminently respectable gentlemen to take this position and handle the funds of the people, they will find other investments, and they ought to do it. If this continual stealing is to go on, it is better that they should be wiped off the face of the earth, and that the government should establish for the people a place to deposit their earnings, secured by the credit of the Government. That is what I hope to see done yet, and if we carry this amendment it will probably be the conse-

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quence. It is proposed in Congress now. Then the people will not be at the mercy of dishonest tricksters, no matter how eminently respectable, and some of them are even now grinning behind prison bars. I hope the motion to strike out these words will not prevail.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the Chair.

Roll called, and quorum present.

LIABILITY OF DIRECTORS.

THE PRESIDENT. The question before the Convention is the amendment of the gentleman from San Francisco, Mr. Estee.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: With reference to the gentleman from San Francisco, Mr. Estee, I am sorry that this amendment has been moved, and I hope it will not prevail. It will let all the milk out of the cocoanut. It is a well known fact that in the practical operation of corporations the stockholders taking stock elect a certain number of the stockholders as Directors. These form the inside ring of the corporation, and conduct its business. All the stockholders outside of that inside circle are perfectly ignorant of the actions of the managers. If the ring is disposed to deal unjustly, and squander the property, they ought to be held strictly accountable to the balance of the stockholders. Such an amendment as that would be fatal, and I hope it will not be adopted.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I agree with the gentleman entirely. Take the first part of this section, which says that the stockholders of a corporation or joint stock association shall be individually and personally liable for their proportion of the indebtedness and liabilities—I don't see, in all reason, how there can be any objection to this. And then, as to the Directors being liable for the misappropriation of moneys, it appears to me it is just. It was certainly discussed at length before, and we thought it was just. We did not suppose it could be gotten up in any form so that some objection could not be urged against it. It seems to me it is correct as it is, and I am in favor of it.

THE PRESIDENT. The question is upon the amendment of the gentleman from San Francisco, Mr. Estee.

The ayes and noes were demanded by Messrs. Beerstecher, O'Sullivan, Barton, Larkin, and Dean.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Hilborn,	Schomp,
Casserly,	Inman,	Shoemaker,
Chapman,	Keyes,	Stevenson,
Cowden,	McConnell,	Stuart,
Dudley, of Solano,	McFarland,	Thompson,
Estee,	McNutt,	Van Voorhies,
Estey,	Pulliam,	Wilson, of 1st District,
Gregg,	Reed,	Winans—26.
Harvey,	Rhodes,	

NOES.

Andrews,	Herrington,	Reddy,
Ayers,	Holmes,	Reynolds,
Barbour,	Howard, of Los Angeles,	Ringgold,
Barry,	Howard, of Mariposa,	Rolfe,
Barton,	Huestis,	Schell,
Beerstecher,	Hughey,	Shafter,
Bell,	Hunter,	Shurtleff,
Biggs,	Joyce,	Smith, of Santa Clara,
Blackmer,	Kelley,	Smith, of 4th District,
Boucher,	Kenny,	Smith, of San Francisco,
Brown,	Kleine,	Soule,
Burt,	Laine,	Stedman,
Charles,	Lampson,	Steele,
Condon,	Larkin,	Sweasey,
Cross,	Lavigne,	Swenson,
Davis,	Lindow,	Swing,
Dean,	Mansfield,	Tinnin,
Dowling,	Martin, of Santa Cruz,	Tully,
Doyle,	McCallum,	Turner,
Evey,	McComas,	Tuttle,
Farrell,	McCoy,	Vacquerel,
Filcher,	Mills,	Walker, of Marin,
Freud,	Moffat,	Walker, of Tuolumne,
Garvey,	Moreland,	Waters,
Glascock,	Morse,	Webster,
Gorman,	Murphy,	Weller,
Grace,	Nason,	Wellin,
Hager,	Nelson,	West,
Hale,	Neunaber,	White,
Harrison,	Ohleyer,	Wilson, of Tehama,
Heiskell,	O'Sullivan,	Wyatt,
Herold,	Prouty,	Mr. President—96.

MR. McCONNELL. Mr. President: I offer an amendment.

"Add to line five as follows, 'where such embezzlement or misappropriation shall occur through the direction, collusion, fault, or negligence of such Director or Trustee sought to be held liable.'"

REMARKS OF MR. MCCONNELL.

MR. McCONNELL. Mr. President: It seems to me this is all the friends of the proposition should want. There cannot be any justice in any amendment that will hold the minority of a Board of Directors severally liable for the criminal acts of the majority. That amendment will place the blame and the responsibility where it justly belongs. I trust it may receive the favorable consideration of this body. If you do not adopt an amendment you will drive out every honest member of the Board of Directors.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: This Convention, in Committee of the Whole, fully considered this matter, and after deliberating three weeks upon it, adopted it. I have seen no amendment, and I hardly think there will be, that will improve this article. I believe it stands as well as it can be made. The amendment offered would qualify the effect of that section. That section, I think, is right as it is. If those gentlemen who are Directors of corporations will attend to their duties—if one member will examine into the books and deposits of corporations engaged in banking, they may protect the stockholders. Those men who simply allow their names to be used as Directors, and never attend to the duties, ought to be compelled to.

MR. McCONNELL. But you provide there for holding the minority directly responsible for the conduct of some one over whom they have no control, which will drive the best men out of the Board.

MR. LARKIN. That is the point I desire to state. Under that amendment there would be room, under one plea or another, to clear each and every Director of his responsibility. It is all right as it is. I don't think it can be any better. It will make the bank directors of this State responsible. If one half of the banks of this State were closed it would be better for the people, who are robbed and plundered when there is no responsibility attached to the Directors. Individuals engaged in banking are responsible, and corporations should be held responsible.

SPEECH OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: It might be quite possible that the people of this State would be better off if some of these corporations were wiped out. The gentleman from El Dorado seems to think it would be better if half the banks should go out of existence. The gentleman from San Francisco, Mr. Estee, seems to take similar grounds. Now, it is quite possible that the gentlemen are both right. But, sir, is it at all certain that the better half of these corporations will remain in existence under this section as reported by the Committee of the Whole? I am very strongly under the impression that the worst half will remain in existence. I feel very sure that a very large number of the better class of corporations will be wiped out of existence. Men will not become responsible, to the extent of their entire private fortunes, for the transactions of other men over whom they have no control, who have been placed in position without their consent, and even without their votes, and against their wishes and interests. They will retire from the management of these corporations. Now, the result will be that either the corporation will retire from doing business, or there will be substituted for men of responsibility men of straw. This is not at all unlikely. Designing men have sought that manner of doing business for the purpose of further gulling the public into thinking that they are doing a legitimate business. It is quite probable that the dime savings bank of Sacramento, and the Duncan institution of San Francisco, were institutions of that kind. If we can do anything to hold the party who commits the wrong directly responsible, why, of course, it ought to be done. That is one of the wrongs that ought to be remedied, but it is one of those wrongs that we ought to guard against without making the responsibility so broad as to crush out good corporations.

Now, I am under the impression that there are some good corporations in this State; that there are banking institutions of character and stability in this State, that are doing an immense amount of good; they are doing a legitimate business, and yet they all come under the same rule. Everybody knows there is no institution but what is liable to get within its office men who are unworthy and dishonest. This has been the case with some of the best institutions of the country, some of which have become bankrupt from that cause. Now, there is no good reason why the Directors should be made responsible, in all cases, for the employés of an institution. It is true, I believe, that the corporation is responsible to the extent of its entire property. The corporation is a person known to the law. Private individuals, doing business upon their own responsibility, are responsible for their own acts and for the acts of their employés. Now, the law has brought into existence these artificial persons for the purpose of doing business. The joint property of these artificial persons is held responsible for the mismanagement or misappropriation of moneys, and I see no reason why the responsibility should be extended any farther. I don't understand that it is possible for the law to stand sponsor between the private individual and all his bad investments. I understand that every individual can exercise his own judgment as to where and how he shall invest his funds. It is optional with the depositors of San Francisco whether they shall deposit with Duncan or not. They did so because he offered greater inducements than any other bank. I know, and every sane man ought to know, that no such institution can live. I believe the people should exercise their own judgment in this matter. If they do business with a private individual they take their chances, and I see no reason why they should not do the same thing in dealing with corporations. I have conversed with the people in the neighborhood where I live, and in that neighborhood there is a bank. There is a large agricultural country around there. It is a thriving institution, doing a safe business. I know the Directors are honest, responsible men. In a conversation with these gentlemen, they told me if this should remain in the Constitution they would be under the necessity of retiring from the institution. There is

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not one of them who would be willing to stand responsible for all the business done in the institution, when they were in the minority. I hope that the amendment will be adopted.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: It is with some hesitation that I attempt to speak upon this amendment, for the reason that so many gentlemen of much larger experience are in favor of it. Now, sir, I think it would be better for these gentlemen who are in favor of this amendment to bring forward a proposition squarely to strike out this section, and then we can take the direct sense of this Convention as to whether the stockholder is without any remedy against the Directors or Trustees of a corporation for the misappropriation or embezzlement of the funds by the officers chosen by those Directors.

Now, if this section, as amended by Messrs. Terry and Webster, is adopted, it seems to me that three good results will follow: First, when the Directors are made directly responsible for the acts of the officers whom they choose, they will be exceedingly careful in the selection of those officers; the result will be that corporations will have a more reliable class of officers. Second, when they have chosen those officers, they will watch their acts with greater care, because they know that they themselves will be held responsible. Then, sir, when a savings bank or trust company has failed, instead of the Directors coming forward and saying they have not looked at the books for five years, supposing everything was all right, they will have to answer directly in Court for the loss of the money by reason of their negligence. Now, sir, the third beneficial result to flow from this is, that good and responsible men will not lend their names to be used as Directors of badly managed institutions. That, sir, has been one of the worst features in the management of corporations in this State. A few men, without money and without responsibility, organize a corporation, and borrow the names of certain men of character and standing in the community. The result is, that good and responsible men are induced to stand godfather to irresponsible corporations and associations, and the people, who do not understand such matters thoroughly, seeing these names of good and responsible business men attached, are induced to repose confidence in the corporations which they otherwise would not do. Now, with such a provision as this in the Constitution, no man of standing will allow his name to be used in that way, unless the scheme be a responsible one. Then the great business of this State, instead of being carried on by irresponsible corporations, would be done by private individuals and copartnerships. Then, sir, the men who take the profits would also take the risks. It is said that they ought not to be held responsible for the acts of employés. When a man employs a clerk or cashier, he takes the chances of losing money by his dishonesty.

Now, sir, it is claimed here that these Directors, being made responsible in this manner, will not act as Trustees and Directors. I believe that is the strongest argument in favor of the section reported by the Committee of the Whole. If men are connected with an institution which they know is responsible and under good management, with good officers in charge, they will not be afraid to stand in with it. And when it becomes apparent that the management is bad, they will get out of it. So the result will be that we will have responsible corporations managed by responsible men. Now, this amendment proposed is a delusion and a snare. The author is not a lawyer, but if the most talented lawyer on the floor had drawn it, it could not have been more skillfully done. Now, it says that they shall be held responsible when such misappropriation occurs through the fault, negligence, or direction of the Trustee sought to be held liable. Then what? Whenever a stockholder sues the Trustees, he has got to prove what? He has got to prove that the loss occurred through the negligence or direction, or through fraud on the part of the Director, or through his direction. How is he to prove it? How is he to know who did it? No, sir, it will not do. If the President of the bank stole the money, could he prove that the Trustees directed him to steal it? Gentlemen want to cut the head off, and leave us the shadow without the substance. It will never do, sir.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I do not think I misrepresent the opinions and wishes of these gentlemen who are opposing this amendment when I say that this is intended to destroy corporations in this State. The gentleman from San Francisco, Mr. Barbour, says if this provision is allowed to stand as it is, that it will probably secure the result of transferring all corporate institutions over to the government, for the simple reason, I presume, that these provisions will destroy all corporate life. The argument just closed amounts to the same thing. If that is the desire, let them come squarely out and say, we will have no corporations.

MR. BARBOUR. I did not make use of any such expression. I said if that should prove to be the fact. But there is no danger but what they will hang on to it.

MR. SHAFTER. I understand that is the effect. A man is presumed to intend to do just what the natural effect of his act is. Now, I attempted to argue in the Committee of the Whole that a man ought to be responsible for his own individual misconduct, but nothing beyond that. The gentleman from Nevada says that a man cannot prove this negligence. If I am walking along on the street, and a man comes along driving an unbroken horse, and runs over me, I sue him for negligence, and prove it. You can prove it from the records, and in various ways. I am for treating these Directors the same as I would treat anybody else. I am not going to try them by a different rule from that which I judge the rest of mankind, simply because they occupy these positions. Sometimes illustration is better than argument. Here is a package of money comes into the bank, into the hands of the teller, who is perfectly competent for the place—has had years of experience. He takes it and passes it back upon the desk, and turns to the business at the counter. Another clerk, whose business is in another department, comes along and slips it under his coat, and in an hour he is off with it. This is an instance which occurred. Now, this teller had been in the bank for years, and was considered perfectly trustworthy, and nobody questioned his honesty. Now, you propose to say that the Directors of the bank shall be responsible for the loss under just such circumstances. The Directors have no business in the bank. They have no business there, and ought to be driven out if they go there. The Directors have no power at all, except the power which the stockholders give them. If they give authority to the Directors to compel the employés to give bonds, they can adopt such regulations as they please. The Directors exercise their judgment to the best advantage in selecting these employés. If the drayman, hauling a lot of bullion on the dray, drops one off to a confederate, the Directors are responsible for that. Make the corporation liable to the depositor—that is all right—no matter how it is lost. The corporation must pay the depositor. But why should the Directors, who are hired by the corporation, be made responsible to the corporation, or to the stockholders, when they have done everything which the stockholders required them to do? I hope, if the section is to be allowed to stand, that it will be got into something that looks like business and common sense.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. President: The section now under consideration involves a proposition, which, in my humble judgment, is the most absurd that has been presented to this Convention, and that is saying a good deal. It is the cap-sheaf of folly. Independent of the serious consequences that would follow its adoption, it will make us the laughing-stock of the nation. An instance of the practical result of this section will illustrate how little it is based upon reason or good sense. We will suppose a case in which the officers of a bank shall embezzle half its capital. The loss would be directly a loss to the bank—the corporation. Yet this section gives no right of action to the bank for its lost capital, but only an action to the stockholders. It is a sound principle of all our statutes on the subject of corporations, that no dividend shall be made to stockholders out of the capital, but only out of the surplus profits. This section violates that sound principle and practically gives the stockholders a dividend out of the capital. Such a loss would be a direct loss to the corporation, and in it alone should be vested the cause of action; otherwise there is an unpardonable confusion of the corporation with the stockholders, the right of each being entirely separate and not to be confounded. If the corporation were in such case to retain the cause of action as at present, then on a recovery of the loss the capital would be restored and the creditors could look to it as a fund for the payment of their debts, and the stockholders be incidentally benefited. Their stock would be increased in value and the chances of dividends be advanced. But to allow the stockholders to recover and divide the stolen capital, is not only to allow a dividend to be made out of the capital before the payment of debts, but it takes away a cause of action from the corporation to which it rightfully belongs, and makes it proceed in its business, if indeed it can, with an impaired capital; and diverts from the creditors a fund on which they have a claim and lien paramount to that of the stockholder. Could anything be more irrational?

When the section was under consideration, which imposed new and extraordinary liabilities upon the Directors of corporations, it was urged upon the one side that no Director should be liable for any loss in which he was guilty of no neglect, fraud, embezzlement, or other wrong. Some urged, in reply, that no matter how the loss should arise the Directors should be responsible, and should make it good, because corporations are often badly managed. The gentleman from El Dorado was very clear in his views, and made a forcible argument on the subject of the responsibility of Directors who should be guilty of fraud or negligence. No one here has contended the contrary. All have agreed that every Director should be held responsible for any loss occurring through his fraud, complicity, or neglect. The only difference has been on the subject of holding men who shall be innocent of any wrong, and innocent of any neglect, responsible for the wrongs and crimes of others. The gentleman from Nevada, Mr. Cross, wants the members to go upon the record on these questions. For one, I am perfectly satisfied to have it go plainly upon the record that I am unreservedly opposed to holding a man responsible for any loss concerning which he has been free from guilt and free from all complicity or negligence. The latter gentleman insists that no money could be stolen from these institutions without the fault of the Directors. The very instance given by the gentleman from Marin County shows that this is not true. An officer of a bank in the very midst of the business with which he is necessarily intrusted, and in business hours, in open bank, might steal money, and the Directors might be entirely free from any guilt or any neglect. Such a case might easily occur, in which no one could be blamed in the nicest scale of morality except the thief himself. But it is said that in such a case the bank itself would be responsible to the third person, who might thus be injured by such a theft committed by such an officer. Upon this basis it is said that if the innocent corporation is liable for the loss occasioned by the theft, or other wrong of its officer, why should not our innocent Director be liable for the act of a fraudulent officer? Such a mode of reason results from simple confusion of dissimilar things. A corporation is always responsible to its creditors, and a loss of its assets by a wrongful act of its officer does not discharge the debt of the creditor. The relation which the bank sustains to its customers is one resulting from contract. Such contract liability remains until satisfied in some ordinary legal manner.

To hold the Directors of a corporation responsible for the act of an officer, when the Directors are entirely free from fault or negligence, is like holding a foreman of a mine responsible for the independent acts of the men under him. The corporation might be responsible for such acts; but on what principle could we hold the innocent foreman liable? The

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owner of a ship may be liable in a case where there would be no wrong done by the master. If a sailor should rob a package of merchandise, why should an innocent master make good the loss? That is too absurd to be advocated, yet it involves the precise proposition embraced in the section now before this body. It is characterized by neither fairness, justice, nor common sense.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. President: The appointment of officers of a corporation will depend on the Acts of the Legislature, and the by-laws they may make in pursuance thereof. Now, no matter how they may provide for the appointment or election of officers, no matter what by-laws they may make—that is to say, as to whether they shall be appointed by the Directors or by the corporation at large—in either case the Directors are responsible for those officers. For instance, the by-laws provide that the officers of the corporation shall be elected by the corporators. Then, under this provision, the Directors would be responsible for the acts of the officers; responsible to the corporators for the acts of the officers which they themselves had appointed or elected—responsible for the acts of agents in whose selection they had no part.

MR. CROSS. Does the gentleman not know that under the present law the Directors must appoint the officers?

MR. REDDY. That is a mere statutory provision which the very next Legislature may change. Now, do you propose to make the Directors responsible for the acts of officers in whose appointment they have not a word to say, and over whose actions they have no control whatever? They cannot remove or discharge them, and yet they must be held responsible for their conduct. There is a disposition shown here by members to go away beyond everything that is sanctioned by reason or sense. It is overturning all the well settled rules of law. You are making men responsible for the acts of an agent he can neither hire nor discharge. Suppose you have a mining corporation and a Board of Directors. The corporation, at the same time they elect the Directors, elect a Superintendent. The Superintendent runs away and defrauds the company; does any sane man pretend to say that it would be just to hold the Directors responsible for the loss, when they had no voice in his election?

MR. HEISKELL. If the Directors accepted the position knowing that this provision existed, and accepted the responsibility, I would answer yes to your question.

MR. REDDY. No sane man, who is financially responsible, would accept the position. Now if you are aiming to destroy all corporations, that is another question. The difference seems to be between regulation and destruction. One party wants to destroy, and another party is willing to make reasonable regulations. There is a wide difference between regulating and destroying, which some gentlemen do not seem to understand, or else they don't want to understand for their own convenience. Now, I do not propose to argue this question any further, but I will merely say this: Make your rules just as stringent as you please; adopt any rule that aims at the punishment of guilty parties, either of negligence or fraud; but do not put in any clause that will punish the innocent alike with the guilty. That is not statesmanlike. It is not just or reasonable. It certainly cannot result in any good. Do not make a man responsible for the acts of another.

MR. REYNOLDS. Did you ever hear of a man becoming responsible for another on his bond?

MR. WILSON, of First District. Without being sorry for it? [Laughter.]

MR. REDDY. Yes, sir; but there is no rule of law which compels him to be responsible.

MR. REYNOLDS. I would like to have the gentleman explain where there is any essential difference.

MR. REDDY. In the one case a man may be compelled to enter into a corporation for the purpose of protecting his own interest. I have only to say this in addition, that this is certainly a very good measure to destroy all corporations, and should be headed to that effect.

SPEECH OF MR. FILCHER.

MR. FILCHER. Mr. President: I am surprised at the efforts being made here to overturn the decision of the Committee of the Whole, and, sir, I seriously hope the section will be allowed to stand as passed by the Committee of the Whole. I believe among the good things passed by the Committee of the Whole, this section is one of the best; and, sir, I further believe that no action upon the part of this Convention assembled here, has received so hearty a response, such unanimous approval as this, among the people of this State, as expressed through the interior press. Now, sir, it seems to me that the responsibility provided for here is more than just. If I borrow your money and my clerk steals it, are you going to exempt me from responsibility. No, sir. Some great calamity happens to the property, and destroys your money, are you still going to hold me responsible? The thief comes along in the night and takes that money, are you going to make me responsible for that money? This would work a very great hardship on me, and yet, sir, it is the law of the land, and against that law I have never heard any complaint. Now, sir, I say if corporations cannot be made equally responsible with private individuals without destroying them, let corporations be wiped out of existence. Apply the same rules as you would to individuals. I believe in equality before the law. I believe one individual ought to be placed exactly on the same footing before the law as another. If corporations cannot exist upon this footing, let them go down. But I say they will exist. If Directors assume the responsibility which they know is attached to these positions, then they should be held responsible.

MR. ESTEE. Is there any such thing as insuring, except through corporations.

MR. FILCHER. Yes, sir. But I am not for destroying corporations, and I do not hold with those who say that this provision will wipe them out.

MR. ESTEE. Without this amendment, would not an insurance company of San Francisco—would not the Directors of it—be responsible for the errors of all the traveling agents?

MR. FILCHER. Yes, sir. If Mr. Estee establishes a business in San Francisco, and sends an agent to Nevada City, he is responsible for the acts of that agent.

MR. ESTEE. That is a different thing.

MR. FILCHER. Why should not the Director be responsible? I fail to understand. I repeat, sir, there is no difference. If we cannot place corporations on the same footing before the law, let them go down.

SPEECH OF MR. WINANS.

MR. WINANS. Mr. President: This Convention was called together to represent all classes of constituents, all interests, and all kinds of property in the State. It was intended to be fair, equal, and impartial. It was based upon the doctrine that the wants of the entire community were to be represented. In utter contravention of that principle, the whole course of policy in reference to corporations is aggressive. The section here is a direct blow at capital. That is what it aims at. That corporations will be destroyed if this principle is carried out there can be no doubt. Of all the propositions that have come before this body, without exception, this is the most radical and wrong. There is none that so utterly ignores the interests of the people, and so thoroughly disregards the claims of capital in all its forms. Sir, if this should be passed you will extinguish corporations. They connect themselves with every description of transactions in the commercial world, and yet, sir, they are sought to be involved by the principle here involved. No men in their right senses will consent to be managers of an institution where they are personally liable, without their own default, without error of omission or commission, where the innocent are to be punished for the sins of the guilty. That is the doctrine here involved—that the innocent are punished for the crimes of the guilty.

As was remarked by the gentleman from San Francisco, there are certain kinds of business that can only be carried on by corporations, and, sir, men will not take hold of these institutions if they are made responsible in this form and to this extent. What then? They will degenerate and pass into the hands of irresponsible men, and the institutions themselves, if not abandoned by the better order of people, would fall into discredit, and finally into disuse. That is the result of this sweeping, monstrous, doctrine. It strikes at the very roots of the tree of public prosperity. It aims its deadly efforts at the very foundation of affairs. It subverts, bankrupts, and brings them down upon the heads of the very men who are doing this thing. I hope men will not allow themselves to run against their own interests as well as the interests of the State. If they will consider this question they will see that the middle course is the best and safest. There is a middle line which runs through, and to go upon one side is to tolerate abuses which now exist, and upon the other to destroy instead of correcting. Let us consider this thing calmly, and without passion. Come and let us reason together. Let us have something that is equal and just. If there are abuses they ought to be corrected, but this can be done without destroying them.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: Society totters upon its very foundation, and the sky is portentious. Bloody and fearful spectres float around the air. The signs of the times portend the destruction of society, of law, of order, and of the world. What can we do, sir? What is the cause of all this threatened devastation and destruction? The ghost of Banquo stalks through these halls, and will not down. Look at it, sir, and weep. These Directors have been held up as figureheads to induce the hard-working sons of toil to go to these institutions and deposit their earnings; and now, because we propose to infuse a little life into these figureheads, a little responsibility, we are denounced as trying to destroy them. That's all. That is all there is in the proposition here that is shaking the foundation of society, and running the ship of State upon the rocks. The like of it never was heard of, and has no parallel anywhere. Let us reason together. What is the hardship they talk about? Where is the wrong? They beseech us to restore and preserve the present condition of things. What is the present condition of things? Why, the door to fraud has been left wide open, and people have had no redress against the bold robberies of the men who have managed these institutions. It may work a hardship in some individual cases. Not a law is ever passed and enforced that does not, in some instances, work a hardship. But we have heard nothing new on this proposition. Not a single new argument has been advanced. Not a single new reason has been given here. It is a rehash of the old wail which for weeks went up in Committee of the Whole. The same old argument of the innocent Director; that is what we have had rehashed time and time again. Why, they are all innocent. The Directors of Duncan's bank, and all those institutions that have failed, are innocent. Why? Because you cannot fix the responsibility upon them. You never can. The question is here, are gentlemen willing to give the people some protection? That is the question. If these Directors do not want to take this responsibility they can resign. They can take their money and go into something else. They are not compelled to take these positions. All we are requiring of them is that they shall be responsible for the faithful discharge of the trust which they have undertaken. That is all it amounts to.

REMARKS OF MR. REED.

MR. REED. Mr. President: I am opposed to this section. I believe it is a vicious provision. I did not vote for it in the Committee of the Whole, and I do not propose to vote for it now. I think the tendency will be to cripple a great many banks. It is well known to all gentle-

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men living in the country that farmers, as a class, are large borrowers, and require additional banking facilities for securing money. The tendency of this provision is to drive men from the position of Trustees and Directors.. I do not really believe that any sound business man would accept such a position. I do not believe that a single man in this Convention, if he is a man of money, would accept such a position under this section. I would not look upon him as a sound business man if he did. This will have a tendency, of course, to cripple these institutions. It is impossible for the farmers to go to San Francisco to obtain money. I know one of the largest farmers in this State went to San Francisco last month, with two hundred and fifty thousand dollars worth of property, on which to borrow forty thousand dollars, and could not get it. They do not want to take property in the interior as security. I shall certainly oppose the section.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: When this subject was up for discussion in the Committee of the Whole, there was something said with reference to these banking institutions that should have been borne in mind by these gentlemen who are now so anxious to perpetuate these evils on the community. They ought to have learned, by this time, that it was by the sufferance of law that these combinations of capital were allowed to be made, with limited liability. This is a prerogative which they enjoy exclusively. They are responsible only to the amount of money which they put in there. For this reason poor people, who trust them with their savings, have been swindled and robbed, and there is no redress—nobody responsible.

MR. SCHELL. Does the gentleman know where poor people have ever lost a cent by these institutions, except in the City of San Francisco?

MR. HERRINGTON. Yes, sir; all over the State of California. Right here, in the City of Sacramento, two banks have gone down with every cent in the vaults. The cause of all this is the lack of responsibility, and that alone. These corporations have been working under special privileges, and have thus been able to monopolize the business of the country. Private individuals and partnerships cannot compete with them, because they are liable to the last extremity. There will scarcely be a sound institution upon this coast, if business is allowed to run along the way it has been running. That is the kind of business we desire to stop. It is all caused by a want of business responsibility. Gentlemen say we must not take away their rights in relation to a limited responsibility. They forget that it is not a right, but only a privilege. What right have you to run your bank, except as a private individual, except as the law gives you the right? It is nothing but a swindle, permitted by the law. It is a legal fraud to allow the bank owners to be responsible only to the amount they put into the concern. This is the system which we desire to check. It is against this special privilege we are entering our protest. It is against this system of wholesale wildcat banking, which runs through the whole long list of corporations in this State, that we are waging war. We say that the men who have the management of these institutions shall stand as security, not alone to the depositors, but to the stockholders, whose eyes are closed after the election is over. We ask that the Directors shall be responsible to duty, so that they cannot be frozen out, as they have been so often; so that the money cannot be diverted to the construction of planing mills, to the construction of railroads, and other things outside of the business of the institution.

MR. ESTEE. I believe you have a local railroad company in your county?

MR. HERRINGTON. Yes, sir.

MR. ESTEE. A good, honest company, composed of good, honest citizens?

MR. HERRINGTON. Yes, sir.

MR. ESTEE. Would it be fair to hold the Directors responsible for the dereliction of those who act in the capacity of officers?

MR. HERRINGTON. Yes, sir; it would be fair.

MR. ESTEE. All right; that is all.

MR. HERRINGTON. If the Directors appointed them they ought to be responsible for them. They elected me to that position.

MR. HAGER. If they knew they were responsible for your acts, would they not resign?

MR. HERRINGTON. No, sir; they know me better than my constituents who sent me here. (Laughter.)

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I believe this section was adopted by a very few votes. I voted against it then, and I shall vote against it now. It seems that a raid is to be made upon the country banks, because a few banks in the City of San Francisco have failed. The gentlemen from San Francisco have been very profuse in their denunciation of thieving institutions, when the thieving has mostly been done in their own city. Now, in the country, it is well known by every farmer on this floor the banks are in a sound and healthy condition. They are the only medium through which we can get money in the country, because capitalists from San Francisco do not like to loan money on country property. Therefore, I would like to have Sonoma County exempted from this clause. But it seems this is to stretch all over the State because there has been swindling in San Francisco.

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. President: I expressed my opinion before on this proposition, and what I have to say now will be very brief. I cannot see any harm at all in this proposition. It is the most harmless thing I ever saw. There is nothing in it to injure any one. All it demands is that the stockholders of a corporation are responsible for the indebtedness of the company; that the Directors or Trustees are responsible for the embezzlement of the officers that they elect themselves. I am sorry that men can't go upon such a proposition as that. It is worth forty millions to the people of the State of California to have this inserted in the Constitution, because hereafter it will prevent such banks as Duncan's. There would never have been such losses to the people if there had been such a clause as this in the Constitution. It is not a new thing. They have it in England.

MR. ESTEE. No, sir. They have banks there with limited liability.

MR. DOWLING. That is a limited liability Act. A man knows what the responsibility is before he goes into it. And, sir, if a man understands what he is doing all the time he will never do wrong. I will vote for the proposition, because it is a good scheme.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: I don't wish to make a speech, but simply to enter my protest against the adoption of the section. The effect will be to crush out every country bank in the State. I don't think the people of this State sent me here for any such purpose. If this section is adopted every man of means connected with a country bank will resign at once. Business men will not accept these positions, because, in order to protect themselves, they would have to exercise a personal supervision over the bank, and this they could not afford to do unless they are paid a salary. The country banks would have to close their doors, for the reason that they cannot afford to pay them salaries.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I wish to say, sir, that since this section was adopted I have taken considerable pains to know what the opinion of the banks were in our section. I understand that not a single Director of that county will resign. They are perfectly satisfied. They are honest in the administration of their affairs. I therefore think this will have no weight. Not one man in a thousand will resign. It will make them look out for the bank. They will not stand by and see the funds stolen, and then make the lame excuse that they knew nothing about it, and then sneak out and allow these poor people to suffer. They will not resign, but they will be ten times more watchful.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: I am in favor of this section as it stands. I am in favor of it because I look with suspicion upon the banking institutions of the State, and this is verified by my past experience and knowledge of the banks of San Francisco. We want something that will compel them to do a legitimate business, and no man need fear that his business will be injured, if he is doing a legitimate honest business. Honest men do not shun responsibility. It cannot effect men who are doing a legitimate business. Poor men and women, when they go and deposit their savings, will have an assurance that when they go there they will get their money with interest. Now, if they put it in they don't know whether they will ever see it again or not. If we don't put the screws upon these swindling institutions the country never will prosper.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I was absent when this matter was considered before. I am decidedly opposed to it. I am in sympathy with the bank depositors, though my own bank account is on the wrong side of the book. Your Legislature has appointed a Bank Commission, who are traveling over the State examining the banks of the State. You may safely leave the matter where it is, and with the Bank Commissioners there is no danger of your banks. I presume these gentlemen who are talking so much, the banks have lost more money by them than they have ever lost by the banks.

MR. HEISKELL. Is there not a large banking institution in this State defying the Bank Commissioners at this time?

MR. BIGGS. I understand so, but I presume that the Commissioners will go and do their duty. I know these men, and there is no back down to them. Now, I ask these gentlemen what in the name of heaven do they want to put this clause in the Constitution for, shooting at the banks of the country. The gentleman says he talked with Directors, and they do not oppose it. I do not think he ever found one in favor of it. I have talked with a Director upon this floor, and he tells me he will resign as soon as this is adopted. I do not want to be held accountable for what other men do. Now, I ask you not to cripple the institutions of the country. I do not believe San Francisco is out of the State yet, and I do not desire to see her institutions crippled.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. President: If it is desired that this country shall be overrun by such men as Max Marcuse, and Jo. Davis, and Duncan, and other thieves of that ilk, it is proper and right that you should adopt the amendment of the gentleman from Sacramento. It is argued that if an an employé in a bank should steal the money the Directors should not be responsible. That is not the issue. The issue is just exactly in these two words. We propose to provide against the embezzlement and misappropriation of our funds, and the subject of stealing is not mentioned at all. But the bankers and the friends of bankers, go off upon that theory in order to distract attention from the real live issues involved in this proposition. I do not wish to detain the Convention, but I do want to make an appeal to the friends of the people on this floor to stand by their guns, and incorporate this section into the Constitution.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: I hope the section will be adopted just as it came from the Committee of the Whole, without the dotting of an "i" or the crossing of a "t." Major Biggs says that if this section is adopted the bank owners and bank directors will be obliged to resign and leave the State.

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MR. BIGGS. I said no such thing. I said one Director told me so.

MR. WYATT. Now, sir, when we were discussing the railroad problem we were told that we would ruin Stanford and the railroads if we did thus and so, and that we were doing a great injustice to a large portion of the community. And then when we came to regulate land monopoly another set of gentlemen set up a cry about the wrongs to the poor land monopolists, and they said, gentlemen, the possessions of these men must not be touched. If they have stolen in the past their stealing has been crystallized into law. If none of these are evils, then what have the people been complaining about. We have been here one hundred and twenty-four days trying to find some evil that ought to be corrected, and when we attempt to do so we find that instead of being evils these things are really blessings in disguise, and must not be touched. In the name of reason what are we here for. I hope the Convention will stand by the section.

REMARKS OF MR. LEWIS.

MR. LEWIS. Mr. President: I wish to enter my solemn protest against the section as it now stands, in the name of the people of the county which I represent. I admit that Judge Terry is the author of this section. But it is utterly repudiated by the people of San Joaquin County as far as I have been able to learn. It will be the means of ruining a large number of farmers. That is all that is necessary for me to say.

REMARKS OF MR. THOMPSON.

MR. THOMPSON. Mr. President: I had made up my mind not to say any thing on this question. But since there has been so much said on both sides by learned gentlemen here, I cannot refrain from making a few brief remarks in my humble way. According to my view this is a most iniquituous proposition, as it will cripple all the business interests of this great and glorious State. My theory is and always has been since my advent into this State, that we should hold out all the inducements possible for the encouragement of capital, in order that what we have will remain here, and millions more will come, in order to develop the resources and industries of the State, so that the hum of the mill and the sound of the hammer shall resound through the length and breadth of our beloved State. If this section should be passed as it is, in my humble judgment no intelligent business man would take either stock or directorship in a bank or other corporate body in this State. I for one believe that corporations are necessary; and I believe in restricting them to the fullest extent, and if the law is not strict enough let future legislation make it more so. Let them punish neglect of duty, or fraud, as a felony, with imprisonment, but I do not believe that it is the duty of this Convention to cripple and destroy them. I cannot conceive how any Workingman in this Convention can vote to sustain any such infamous proposition.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. President: I did not vote for that proposition in Committee of the Whole, and I do not intend to vote for it now, because I believe it is wrong in principle, and will be vicious in practice if adopted. It seeks, sir, to make one individual responsible for the misdeeds of another over whom he has no control. I do not subscribe to any such doctrine. I believe an official should be required to discharge his duties rightly. If they discharge their duties honestly and effectually, that ought to be all that is required of them; but to require them to be responsible for the misconduct of others, is not founded on any principle of justice or rule of law. If this proposition is adopted it will be a very great detriment to the business interests of the country.

MR. LINDOW. I don't want to take any time of the Convention. I move the previous question, and vote for the section as it is.

THE PRESIDENT. That will cut off every amendment and every section. It goes to every amendment of the Committee of the Whole.

REMARKS OF MR. INMAN.

MR. INMAN. Mr. President: I believe this is an outrageous proposition. If these gentleman who have lost so much money in the savings banks had taken their money and put it into land, there would have been less trouble about land grabbing, and less trouble about the savings banks of San Francisco robbing them. I do hope that gentlemen will consider this amendment; it will drive out all responsible men and leave men of straw in their places. I am a Director, and I would resign to-morrow if this should pass. I would not involve my little property to benefit others if I could get out of it. It is a mutual association, with fifteen hundred stockholders who pay me nothing. I would not hold a position where I would have to be made responsible for the misdeeds of others. I can see no good in this proposition. It will drive out all responsible men and leave irresponsible men, men of straw in their places. You cannot get along without capital; you must have aggregated capital. Our great trouble is to get money; we must have that money from the banks. It will drive out these moneyed men from business. Let these men take their money and go into the country and buy homes.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: The people of this State have long felt the necessity of some protection of the character of that which is sought to be attained by this provision. It is a notorious fact that nearly every banking institution in this State has a set of officers and directors, who are paraded and advertised as men of responsibility. But when misfortune comes, when collapse comes, these men are not responsible. The depositors have to suffer the loss. Now it is no more than just, it seems to me, that the depositors should be protected as far as misappropriation and embezzlement by the officers of the bank is concerned. In some respects this proposition is stronger and more effectual than the one I offered, but I am willing to accept it as it is. If it will lessen the number of corporations in this State, why I guess we can stand it. It may weed out a class that give us only trouble, and leave us the responsible institutions, which need have no fear of this provision. It is time that the people ought to be protected, and that is what is sought to be accomplished by this amendment. I think that public policy requires that we should adopt this amendment. It will have the effect of restoring confidence in these institutions which are honestly managed. A man does not know, when he puts his money in a bank, whether he will ever see it again or not. Such a provision as this will make the strong institutions all the stronger, and restore public confidence.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I believe, sir, in holding guilty parties strictly to account. I believe also in protecting the innocent. Sir, there is a question in my mind not yet answered, in connection with the amendment of the gentleman from Sacramento. It provides that when such embezzlement and misappropriation shall occur through the dereliction, collusion, or fault of such Directors, that then they shall be held responsible. Now, will some gentleman, learned in the law, tell me upon whom the burden of proof will fall, as to whether there has been negligence or fault upon the part of the Directors. Is it to be the word of the Directors against the word of the majority, who have perpetrated the fraud, or is there to be some method by which he must at the time make a record that shall be susceptible of proof, that he has entered his protest against such work? There ought to be something, in my judgment, whereby a Director or Trustee, knowing that a misappropriation is anticipated, and that there is to be a misdirection of the funds, can point his finger to the record and say, there is where I entered my protest; and thus the burden of proof, if it fall upon the innocent man, will be sufficient to clear him. But I want to know where are your proofs? Upon whom does the burden fall?

MR. CROSS. The amendment of the gentleman from Sacramento throws the entire burden of proof upon the stockholders.

MR. BLACKMER. There ought to be an amendment to the amendment covering that point. I was on the point of offering it, but I ascertained that I was out of order. I think there ought to be something of the kind, whereby a protest entered in writing, or in the proceedings of the Board, will be taken as sufficient evidence of the innocence of such Director or Trustee.

MR. WILSON, of First District. Don't you know that the process of Court can take all the books and records into Court to show whose fault it is?

MR. BLACKMER. There might not be any records. Now, I am in favor of the idea of this amendment, but I want it framed in such a way that the effect of the section will not be frittered away. It is said this will be the subject for legislative enactment, that the details will be provided by the Legislature. It seems to me that this part of the details ought to be provided for here. I believe there ought to be an amendment to that amendment, but I do not know how to do it under the rules.

SPEECH OF MR. BELCHER.

MR. BELCHER. Mr. President: I am opposed to this amendment. I believe it to be wholly and radically wrong. I believed so when it was up before, I believe so now. I believe there is no good in it, and it can do no good by any possibility. Now, I hear gentlemen talking about popular interest in this measure. What the popular opinion may be as far as the gentlemen have ascertained, I do not know, but I have talked with several gentlemen of intelligence since this was adopted, and I have heard but one expression, and that is complete condemnation. I have heard more than one able man say that if adopted it ought to defeat the Constitution. I do not know what their information may be, but as far as I have heard there has been a unanimous expression against the adoption of this provision in the Constitution. That expresses my opinion of it. I believe it will injure this Constitution. I believe it will furnish just cause for men, if they are looking to the best interests of this State, to vote against it. Gentlemen have been talking exclusively about banks. Why, sir, the banks form but a small part of the corporations we have in this State. They are not confined to banks. It takes all corporations—manufacturing, mining—all corporations doing business in this State. It provides that the Directors shall not only be responsible for their own actions, but that they shall also be responsible for the shortcomings of all their subordinates appointed by themselves, as well as for those appointed by the stockholders, and who are entirely beyond their control. I say it is not just, it is not right. The effect will be, must be, that the men who are made responsible to such an extent will sever their connection with these institutions at once. We do not want the corporations of this State driven out. We want corporations for many purposes. The gentleman from Nevada wants corporations to develop mining claims. Corporations have done well in this State. They have built up the manufacturing interests of this State, and are building them up still further. The farmers need them. They unite the farming and manufacturing interests. They build large warehouses for their wheat. You have corporations among the farmers for this purpose. Having formed your corporation, you must elect your Directors, and when you have chosen your Directors you must select somebody to take charge of your warehouse and the wheat in it. Now, you say, if he, or anybody misappropriated the money of that corporation, the Directors shall be jointly and severally liable for the loss. Where is the farmer who would be a trustee in an institution like that. Take the Farmers Bank of San Francisco—would they ever have organized a bank for the benefit of the farmers of this State. One of the Directors I believe is a member of this body. They are farmers scattered around the State. They are not in the bank managing its affairs. Other persons are selected to conduct the

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bank by the stockholders themselves. They know what men are going to be selected when they select the Directors. When the election occurred a few days ago, men were elected Directors with the understanding that they were to vote for the men who are at present managing the institution, and they did vote for them. Now, if Mr. Colby, the President of that bank, is to be held responsible for the shortcomings of everybody else, is he going to remain in that position? If Mr. McConnell is to be held personally responsible for the shortcomings of Mr. Colby, is he going to occupy that position. No, sir; he could not afford to take that position. He will refuse, because it is a business that may ruin him. We expect them to be honest. We want to get honest Directors and honest employés, but now and then a man who is supposed to be honest betrays his trust. Sometimes they become involved in stock transactions and are led away, and thinking to replace it, take money from the safe. Now, sir, I did not rise to make a speech. I am willing to go upon the record as opposed to this section. I hope somebody will call for the ayes and noes when we reach a vote.

REMARKS OF MR. WILSON.

MR. WILSON, of Tehama. Mr. President: I am for the section as it stands. When I first came to this country there were no corporations, but the business was conducted by plain, simple, honest men. We knew who we were dealing with. But then come these corporations, among which was this Sierra Flume and Lumber Company. They swept the country of some eighty thousand acres of the finest timber in this State. They closed out all the little mills. They got all kinds of men to take stock in the concern, and they were going to carry on business with a high hand. Well, they got in debt to our people. There were seven or eight hundred men working there for nine months without a cent. These were the Directors that were doing this. Now, we all understood that Hayward was the company, and the only company. When we come to find out, Mr. Hayward comes in as a one million seven hundred thousand dollar creditor, and absorbs the whole business that the company was worth, and we were left out in the cold. Now, these Directors were carrying on this business all the time. I say, whenever I hire a man to superintend my business, I am responsible for what he does; I am held responsible to the community for his conduct; and I ought to be. That is just as it ought to be. And a man is no better because he belongs to a corporation than I am. He has just as much right as I have to be made responsible. We have seen enough of this irresponsibility, and we want to stop it.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: I am physically unable to make a speech, but I wish to say a few words on this subject. I will promise you not to speak long. I differ with Judge Belcher, who has just taken his seat, in regard to public opinion as to this section. I have found nothing said in regard to this question but praise; in fact, from all I can hear, this is the most popular thing we have ever done. Now, I have been merchandising for nearly seventeen years, and I do not see why such a distinction should be made between those who carry on merchandising and those who do a banking business. Now, I have two partners, say, and during my absence they employ a clerk, and a customer comes in and deposits money with the clerk; I would be held responsible for that money if it was lost or stolen. Why should not the managers of a corporation be held responsible in a like manner under like circumstances. I say, they are one and the same thing. The responsibility should rest on one as much as the other. I can see no possible evil that will arise from the adoption of section three. Those who desire to support the section should vote against this amendment, for it will destroy the section and render it nugatory.

MR. HUESTIS. Ayes and noes.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. President: It was not my intention to say anything upon this question. I would always rather remain quiet and listen to the argument of others. But there are some peculiarities about this discussion which may be of interest to notice. I have heard no gentleman upon this floor quote from the Constitution of any other State. [Laughter.] The Constitutions of Iowa, Massachusetts, Pennsylvania, and Missouri have never been mentioned in this debate. Not even a word from the Constitution of Missouri. [Laughter.] I take it if this section is adopted, we will be the first in the list of States. I have not examined the Constitutions of other States, but the fact that nothing has been said about it shows pretty conclusively that in the other thirty-seven States there is not to be found any provision which can be quoted as authority for the adoption of this. I regard this section as vicious. I believe it should not be passed, and I hope this Convention will not act hastily upon this important subject. We are not a Legislature. What we do here, if sanctioned by the people, is not an act that can be undone. When I took my seat here I firmly resolved that in any question between a new proposition and the old Constitution, if there was any doubt in my mind, I would stick to the old Constitution. I am standing upon that ground now. I have more than a serious doubt as to this proposition. It is vicious. The very fact that it holds the innocent Director of a corporation responsible for the acts of the guilty, is enough to condemn it. It is a vicious principle, which cannot be successfully defended upon this floor. I do not believe that corporations, if properly guarded and regulated, are inimical to the public good. I will go for no vicious provision that seeks to destroy them.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. President: I rise simply to enter my protest against this section, and the amendment known as the Terry amendment, and I am in favor of the one offered by the gentleman from Sacramento. I believe the amendment of Judge Terry to be one of the most mischievous provisions ever presented to this Convention. I have never myself alluded to the people in regard to what they think of what we are doing in this Convention. In regard to this matter, it seems to be the almost universal opinion of those with whom I have conversed that this is a vicious provision. It has been talked about on many occasions when I was present, and has been denounced almost universally. The opinion prevails that this Convention is attempting to destroy and pull down, instead of advancing and building up, the people's interests. I know that to be the case. At the time I was nominated for this Convention the question was asked me whether I was in favor of making Directors responsible, individually, for the full amount. I most emphatically said no, and I was indorsed by the people, because they believed that it would be the means of crushing and destroying corporations completely. I believe that corporations, properly guarded, are necessary for the development of the resources of this country, or any other country. We could not, as a people, do business without them. Anything that is calculated to destroy them or crush them, as I believe this provision will, is certainly detrimental to the interests of the people. I cannot see why men here, having business views, legislating for the business portion of the State, can take so one-sided a view on this subject. I do not suppose there is a business man on the face of the earth who would jeopardize his property, by taking the position of Bank Director under such a provision as this. I appeal to any man on this floor—would you, if you were worth five or fifty thousand dollars, become responsible to the full extent of your fortune, without any recompense whatever, for the acts of men over whom you can exercise no control? I hope the members of the Convention will take this matter home to themselves, and reflect upon what they are doing.

REMARKS OF MR. OHLEYER.

MR. OHLEYER. Mr. President: I am in favor of the amendment offered by the gentleman from Sacramento, and if that is not adopted, I am in favor of striking out section three. Will it be in order to move to strike it out now?

THE PRESIDENT. No, sir, not at present.

MR. OHLEYER. I have conversed with the people of my county, and while they are in favor of holding the corporation responsible to the stockholders, they are not in favor of holding the Directors personally liable for the criminal acts of the employés. In other words, they are not in favor of punishing the innocent for the acts of the guilty. That is what this section proposes to do. They would be entirely satisfied with the section as it was reported by the Committee on Corporations—that each stockholder of a corporation shall be individually liable for his proportion of its debts and liabilities. If they want any more, they would be satisfied with the further amendment offered by Mr. Webster.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: I do not propose to make a speech. I hope this Terry amendment will stand. Who are these Directors? Do they not superintend and control the whole concern? Do gentlemen propose to exempt them from all liability, so that they may employ men who will rob the depositors, at will, and yet nobody be responsible for it? Why, sir, the idea is absurd. I trust that every man who has heretofore sustained this section—the Terry amendment—has got backbone enough to stand by it now. How are these Directors appointed? Why, when scheming men have a scheme on hand, they go to influential men in the community and borrow their names, and give them stock enough to qualify them for the position. Then those borrowed names are paraded before the community, and on the strength of it, men come and do business with them. I challenge any man to deny it. It is a fact in every community in this State. And every man who has got sense enough to find his way home at night knows it.

MR. STEELE. Where do they do that?

MR. TULLY. All over the State.

MR. STEELE. Name one.

MR. TULLY. I, myself, have acted in that capacity, in Santa Clara County.

MR. McCONNELL. My amendment covers that.

MR. TULLY. I do not want any amendment. It is good enough as it is. It is all right, let it stand.

MR. WILSON, of First District. I wish to ask a question. In section twelve, where the minority chooses to cumulate their votes upon one man, they can always have a representative upon the Board to protect their interests. Now, would not this man, by this section, be responsible for the misconduct and misappropriation of the majority, though he should vote and protest against it. Are you in favor of that?

MR. TULLY. There is no man obliged to serve. If he goes in there, let him pay or let him sell out. Some gentlemen have said that they have consulted their constituents about this. I am not in the habit of consulting people as to what I shall do. I believe it is right, and I shall vote for it. Now, I said I didn't want to make a speech, but I just want to see how many men in this Convention will fall down. I want to see how many have nerve enough to stand by the report.

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

Seconded by Messrs. Wyatt, Lindow, Wilson of Tehama, Van Voorhies, and O'Sullivan.

MR. SMITH, of Fourth District. Mr. President: Does the previous question carry with it the whole article?

THE PRESIDENT. Yes sir. The question is: Shall the main question be now put?

Lost.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Sacramento, Mr. McConnell.

The ayes and noes were demanded by Messrs. White, Barton, Ayers, O'Sullivan, and Huestis.

The roll was called, and the amendment was lost, by the following vote:

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AYES.

Belcher, Biggs, Blackmer, Boucher, Caples, Casserly, Chapman, Charles, Cowden, Crouch, Dudley, of Solano, Estee, Estey, Gregg, Harvey, Hilborn, Hitchcock, Inman, Keyes, Laine, Lewis, McConnell, McFarland, McNutt, Miller, Mills, Nason, Ohleyer, Pulliam, Reddy, Reed, Rhodes, Ringgold, Rolfe, Schell, Shomp, Shafter, Shoemaker, Shurtleff, Smith, of Santa Clara, Steele, Stevenson, Stuart, Thompson, Townsend, VanVoorhies, Walker, of Tuolumne, Webster, Weller, Wilson, of 1st District. Winans, Mr. President—62.

NOES.

Andrews, Ayers, Barbour, Barry, Barton, Beerstecher, Bell, Brown, Burt, Condon, Cross, Davis, Dean, Dowling, Doyle, Dunlap, Evey, Farrell, Filcher, Freeman, Freud, Garvey, Glascock, Gorman, Grace, Hager, Hale, Harrison, Heiskell, Herold, Herrington, Holmes, Howard, of Los Angeles, Howard, of Mariposa, Huestis, Hughey, Hunter, Jones, Joyce, Kelley, Kenny, Kleine, Lampson, Larkin, Larue, Lavigne, Lindow, Mansfield, Martin, of Santa Cruz, McCallum, McComas, McCoy, Moffat, Moreland, Morse, Murphy, Nelson, Neunaber, O'Sullivan, Prouty, Reynolds, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Sweasey, Swenson, Swing, Tinnin, Tully, Turner, Tuttle, Vacquerel, Walker, of Marin, Waters, Wellin, West, Wickes, White, Wilson, of Tehama, Wyatt—81.

Mr. ROLFE. Mr. President: I offer an amendment.

The SECRETARY read:

"Add to Terry's amendment to section three as follows: 'except when such Director or Trustee sought to be held liable shall establish that it was not through his direction, collusion, fraud, or negligence that such embezzlement or mismanagement occurred.'"

Mr. LARKIN. I raise the point of order that this is the same amendment just voted down.

Mr. ROLFE. Mr. President: It is different in this respect, that the burden of proof is upon the Director to show affirmatively that the loss was not through his direction, collusion, fraud, or negligence.

Mr. CASSERLY. Mr. President: There is so much moving about and noise here that it is impossible to hear what is going on.

ADJOURNMENT.

Mr. SMITH, of Fourth District. I move we do now adjourn.

Carried.

And at five o'clock and fifteen minutes P. M., the Convention stood adjourned until to-morrow morning at half past nine o'clock.

ONE HUNDRED AND TWENTY-FIFTH DAY.

SACRAMENTO, Thursday, January 30th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews, Ayers, Barbour, Barton, Beerstecher, Belcher, Bell, Biggs, Blackmer, Boucher, Brown, Burt, Caples, Casserly, Chapman, Charles, Condon, Cowden, Cross, Crouch, Davis, Dean, Dowling, Doyle, Dudley, of Solano, Dunlap, Estey, Estee, Evey, Farrell, Filcher, Freud, Garvey, Glascock, Gorman, Grace, Gregg, Hager, Harrison, Harvey, Heiskell, Herold, Herrington, Hilborn, Hitchcock, Holmes, Howard, of Los Angeles, Howard, of Mariposa, Huestis, Hunter, Inman, Johnson, Jones, Joyce, Kelley, Kenny, Keyes, Laine, Lampson, Larkin, Larue, Lavigne, Lewis, Lindow, Mansfield, Martin, of Alameda, Martin, of Santa Cruz, McCallum, McComas, McConnell, McCoy, McFarland, McNutt, Miller, Mills, Moffat, Moreland, Morse, Nason, Nelson, Neunaber, Ohleyer, O'Sullivan, Prouty, Pulliam, Reddy, Reed, Reynolds, Rhodes, Rolfe, Schell, Schomp, Shafter, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Smith, of San Francisco, Soule, Steele, Stevenson, Stuart, Sweasey, Swenson, Thompson, Tinnin, Townsend, Turner, Tuttle, Vacquerel, Van Voorhies, Walker, of Marin, Walker, of Tuolumne, Waters, Webster, Weller, Wellin, West, Wickes, White, Wilson, of Tehama, Wilson, of 1st District, Winans, Wyatt, Mr. President.

ABSENT.

Barnes, Barry, Berry, Boggs, Campbell, Dudley, of San Joaquin, Eagon, Edgerton, Fawcett, Finney, Freeman, Graves, Hale, Hall, Hughey, Kleine, Murphy, Noel, O'Donnell, Overton, Porter, Ringgold, Shoemaker, Stedman, Swing, Terry, Tully, Van Dyke,

THE JOURNAL.

Mr. GORMAN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

REPORT.

Mr. CASSERLY. Mr. President: I wish to make a verbal report from the Committee on State and Municipal Indebtedness, of an article on that subject.

The SECRETARY read:

ARTICLE —.

STATE INDEBTEDNESS.

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

Mr. CASSERLY. Mr. President: I ask that the usual number of copies be printed.

So ordered.

NOTICES.

Mr. GORMAN. Mr. President: I send up a notice.

The SECRETARY read:

"I give notice that, on to-morrow, I will move to amend Rule Thirty-five, in reference to the previous question."

Mr. DAVIS. Mr. President: I send up a notice.

The SECRETARY read:

"Mr. PRESIDENT: I give notice that I will, on to-morrow, January thirty-first, move to amend Rule Forty-three, line one, by striking out the word 'ten' and inserting in place thereof the word 'five.'"

THE RULES.

Mr. McCALLUM. Mr. President: I sought yesterday to get the floor to give notice of a motion to amend a rule of the Convention—Rule Thirty-five—which seems necessary to amend at once. I did not succeed in giving the notice, and I now move to suspend Rule Thirty-seven, which requires one day's notice to be given to amend a rule, and ask that the rule which I have sent up be read, to show the application of the motion.

The SECRETARY read:

"When an article of the Constitution is under consideration, the previous question, when moved, shall reach only the amendments to the section then under consideration."

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MR. McCALLUM. Mr. President: I wish to suspend Rule Thirty-seven, in order that that rule may be considered now. The object is, that when an article is under consideration and the previous question is ordered, it will only reach the amendments to the section then under consideration. Yesterday the Convention desired to cut off debate on a section that seemed to be sufficiently discussed, but did not wish to cut off amendments to the entire article.

MR. ESTEE. Mr. President: I hope that rule will not be suspended for that purpose to-day.

MR. AYERS. I gave notice the day before yesterday that I would move to amend Rule Thirty-five, and had no chance to make a motion yesterday.

MR. McCALLUM. It is Rule Thirty-seven I move to suspend.

THE PRESIDENT. All these propositions are out of order at present.

MR. McCALLUM. I move to suspend the rule.

THE PRESIDENT. Rule Thirty-seven has nothing to do with anything except reconsideration. Rule Sixty is the one which would apply to a suspension of the rules.

MR. McCALLUM. Mr. President: It is Rule Sixty that I move to suspend. We will lose a good deal of time again to-day unless we adopt this Rule as an amendment to Rule Thirty-five. Under the decision of the Chair, if the previous question is ordered it will reach the whole article. I would like to have that rule considered at this time, and I believe two thirds of the Convention are of the same opinion. The vote will show whether I am mistaken.

THE PRESIDENT. The Chair is of the opinion that the motion is out of order. I do not think the latter portion of the rule has anything to do with the first portion of the rule. I do not think that a standing rule of the Convention can be changed without one day's notice.

MR. AYERS. Mr. President: In the Journal of January twenty-seventh, I find the following notice, by Mr. Ayers: "I give notice that, on to-morrow, I shall move to amend Rule Thirty-five, by striking out the words, in the last two lines, 'and then upon the main question.'" I would like to know if I lose the opportunity to make that motion because I did not make it on the following day. I did not see any necessity for refusing to work under your ruling until last evening, and therefore allowed the notice to lay on the table. The question is whether that notification is lost.

THE PRESIDENT. I suppose the gentleman would have the right to call up his motion.

MR. AYERS. Mr. President: I call up my notice and make the motion to amend Rule Thirty-five, by striking out the words, in the last two lines, "and then upon the main question." The object of that notice was this, that under the ruling of the gentleman from Yuba, who occupied the chair in your absence, the previous question carried with it all questions connected with the question before the house down to the main question, and then he intimated that it would also carry the whole article. Then when you took the chair yesterday—at least up to yesterday—I did not see that the rulings were going to operate in that way, until you explained it last evening. Now, the trouble with that ruling is this: that if, in the early part of the consideration of an article, a few trivial amendments are got in on one or two sections, five gentlemen on this floor can move the previous question and shut out all debate and all amendments, and the whole article has to be voted on as it came from the Committee of the Whole. I think the rule, if it operates in that way, is injurious, and will result, perhaps, in not permitting us to perfect the instrument here as we would wish to. In fact I am afraid it would defeat the entire object of the revision of the work of the Committee of the Whole. Until I found that practically the rule was going to work that way I did not care to call up my notice, but now I feel inclined to call the attention of the Convention to its operation, and see if we cannot so amend the rule, so that we can perfect the rule, at least measurably.

MR. GORMAN. Is the gentleman's motion before the house?

THE PRESIDENT. Yes.

MR. GORMAN. I would like to offer an amendment.

THE SECRETARY read:

"Add to the end of Rule Thirty-five: 'Provided, that when the previous question is adopted it shall only apply to the section, and amendments to the section then pending, and not to the whole article.'"

MR. BLACKMER. Mr. President: I hope the amendment of the gentleman from Los Angeles will not prevail, because it seems to me that it will not accomplish the object he intends. If the amendment prevails, then after the previous question is ordered, the first question will be upon the amendments offered by the Committee of the Whole, and then upon amendments offered in Convention, and that is all there would be of it. I am not in favor of changing this rule at all. We saw yesterday the wholesome check that this rule had upon this house by deterring it from sustaining the previous question when it was to carry the whole article with it, because it was seen at once that there could be no opportunity for deliberation; consequently the house refused to sustain the previous question. That will be the result, and we shall have an opportunity to discuss these questions. If it is changed some one will move the previous question as soon as there is an amendment in, and there will be no opportunity, unless the house refuses to sustain it, to look over this work. It will be hurried through without any deliberation whatever. I hope the rule will stand as it is.

MR. ESTEE. Mr. President: I join with the gentleman from San Diego in hoping that this rule will not be amended. It will result, I think, in very hasty action on the part of this House. Now, we have a notice in of a motion to limit debate to five minutes, and if that shall be adopted to-morrow it will relieve this House from all the evil of a lengthy debate. I think this amendment would be very dangerous in the final consideration of articles to go into this Constitution. I have no interest in prolonging debate, for the session of this Convention. From my experience I can say that whenever a deliberative body attempts to remedy supposed or real evils by constantly amending the rules of that body, in nine cases out of ten, they find themselves placed in greater difficulties than the original ones. If we, every day, undertake to amend the rules, why I think that we commit a great wrong. I hope that the amendment will not be adopted, and that the amendment proposed by Mr. Davis, limiting debate to five minutes, will be adopted, and then there can be no danger of a prolonged debate. Every gentleman ought to have a right to offer an amendment, and they ought not to be cut off. The only thing we can afford to cut off is debate.

MR. WEST. It appears to me that the gentleman from San Francisco misunderstands it. It would simply bring the vote direct upon the amendments then pending, and would leave the section susceptible of future amendments.

THE PRESIDENT. The amendment proposed by the gentleman from Los Angeles would bring us to a vote upon all the amendments to the whole article.

MR. WEST. My supposition was different.

MR. McCALLUM. The very evil complained of is what will happen in this Convention unless this amendment is adopted.

MR. AYERS. Immediately after the notice given by me was one by Mr. Tinnin, which I accepted. It was incorporated in my notice; it was as follows: "Amend Rule Thirty-five by striking out all after the word 'amendments,' in the sixth line, and insert the following words: 'and other amendments may then be made to the section.'"

MR. McCALLUM. We ought to reach that section. I hope the gentleman will not accept that. If the previous question is ordered it ought at least reach the amendments to that section. I believe, with all due deference to the Chair, that that is a proper construction of Rule Thirty-five, but the Chair has decided that it reaches the whole article. My judgment had been that the section was to be considered as a bill, and not the whole article, but the Chair has ruled otherwise, and we are endeavoring to change the rule so as to make it apply to the section. Let the previous question cover the section.

MR. AYERS. That was my object.

MR. McCALLUM. I think the gentleman should stand by his amendment as proposed. The amendment proposed by Mr. Tinnin would only cut off discussion upon pending amendments. Other amendments could at once be offered, and there is no end to the section. Therefore I hope that the gentleman will stand by his amendment.

THE PRESIDENT. There is no question before the Convention except the amendment moved by the gentleman from Los Angeles.

MR. AYERS. I understand the Chair to intimate that that would carry the whole article.

THE PRESIDENT. It goes to all the amendments. It would simply exhaust the previous question on the amendments.

MR. McCALLUM. When an article of the Constitution is under consideration——

MR. AYERS. I withdraw my amendment.

MR. McCALLUM. I believe I have the floor.

THE PRESIDENT. There is nothing before the house except——

MR. McCALLUM. I ask the Chair what the decision is? Is the amendment ruled out of order? What is the pending motion?

THE PRESIDENT. The Chair has made no decision. The gentleman from Los Angeles has asked leave to withdraw his proposition. That is all I know about it.

MR. AYERS. I will state that the President has ruled that no amendment can be had to my notice to amend the rule. If that is the case, there is no use of urging it.

MR. HOWARD, of Los Angeles. I rise to a point of order. There is nothing before the house.

MR. McCALLUM. Is that the decision of the Chair, that the amendment of the gentleman cannot be amended?

THE PRESIDENT. The Chair simply ruled that he could not accept the notice given by the gentleman from Trinity, Mr. Tinnin.

MR. McCALLUM. I offer the rule I have sent up as an amendment to his rule.

MR. HOWARD, of Los Angeles. I rise to a point of order. The gentleman withdrew his amendment.

THE PRESIDENT. That is what I understood. The Chair is not able to find out that there is any question before the house. The gentleman from Alameda is before the body. [Laughter.]

MR. HAGER. Mr. President: I would like to give notice that, on to-morrow, I will move an amendment to the rules, so that any amendment offered in the Convention during the consideration of any report of the Committee of the Whole may, by itself, be laid on the table. That will expedite business better than the previous question. It is the rule that they have in the House of Representatives.

THE SECRETARY read:

"That to-morrow I will move to add to Rule Fifty-five, or amend the rules otherwise, so that any amendment offered in Convention during the consideration of any report of the Committee of the Whole may, by itself, be laid on the table."

MR. McCALLUM. I rise to make a motion of which I gave notice upon yesterday, which I will ask the Secretary to read——

THE PRESIDENT. The gentleman has not been recognized.

MR. ESTEE. I move that the whole question of the amendment to the rule be laid on the table.

THE PRESIDENT. There is no question in relation to that rule pending now.

MR. McCALLUM. Mr. President: I rise to make a privilege motion. I move to reconsider the vote by which the Convention upon yesterday adopted the article on the pardoning power, in pursuance of notice given yesterday, and I ask the Secretary now to read the notice.

THE SECRETARY read:

"I give notice that I will on to-morrow move a reconsideration of the

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vote by which the Convention adopted the article on pardoning power, and ordered it to be engrossed and read a second time, for the purpose of amending said article so that the same shall embrace the following amendment: Insert after the word 'reprieve,' in line one, and before the word 'pardon,' in line two, as follows: 'And the Governor, the Chief Justice of the Supreme Court, and the Attorney-General, or a major part of them, of whom the Governor shall be one, shall have power to grant.'"

THE PRESIDENT. The gentleman is mistaken in supposing that the Convention adopted the article. It was ordered to be engrossed.

MR. MCCALLUM. I move to reconsider the vote by which it was ordered to be engrossed and read a second time. I have heard it said that the Chair has ruled, or intimated that it would rule, that on a second reading of these articles they would be open to amendment. I had supposed not. I am informed that the Chair has intimated such a ruling. If that is the case, this motion would be a useless consumption of time.

THE PRESIDENT. The Chair is of the opinion, that after engrossment on second reading it is open to amendment.

MR. MCCALLUM. The same as before? I do not know what the Convention may rule about that, and I will therefore present my motion now, as I have stated, to reconsider the vote by which that article was ordered engrossed. I do not desire now, and shall not hereafter, consume time when I know the Convention is impatient to get through with the business, but I do desire a vote upon this proposition. Yesterday the previous question cut me off without having an opportunity even of presenting the measure. In the Committee of the Whole it is true the proposition was voted down, and it is also true that of all the various propositions pending it came nearest receiving a majority vote. I ask now to have a full vote in Convention upon it. It is copied from the article in the Nevada Constitution, except this, that in Nevada the Governor, Justices of the Supreme Court, and Attorney-General constitute the pardoning board.

THE PRESIDENT. The gentleman is out of order in discussing this motion now. It passed under the previous question, and there can be no discussion upon it. It is not debatable when the previous question was upon it.

MR. MCCALLUM. The Chair rules that the previous question reaches a motion to reconsider.

THE PRESIDENT. Undoubtedly.

MR. HOWARD. Mr. President: I move to lay the motion on the table.

The motion prevailed.

PETITION.

MR. WATERS presented a petition, requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

CORPORATIONS.

THE PRESIDENT. The pending amendment before the Convention is the amendment moved by the gentleman from San Bernardino, Mr. Rolfe, which the Secretary will read.

LIABILITY OF DIRECTORS.

THE SECRETARY read:

"Add to Terry's amendment to section three, as follows: 'Except when such Director or Trustee sought to be held liable shall establish that it was not through his direction, collusion, fraud or negligence that such embezzlement or mismanagement occurred.'"

MR. ROLFE. Mr. President: I will ask leave to make a verbal correction. The word "mismanagement" should have been "misappropriation," to correspond with the original Terry amendment.

THE PRESIDENT. If there be no objection the correction will be made. The Chair hears none. The question is on the adoption of the amendment.

Upon the adoption of the amendment of Mr. Rolfe to section three, the ayes and noes were demanded by Messrs. Farrell, Holmes, Dean, Larkin, and White.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Johnson,	Schell,
Biggs,	Keyes,	Schomp,
Blackmer,	Laine,	Shafter,
Boucher,	Lewis,	Shurtleff,
Burt,	Martin, of Alameda,	Smith, of Santa Clara,
Campbell,	McConnell,	Steele,
Casserly,	McFarland,	Stevenson,
Chapman,	McNutt,	Stuart,
Condon,	Miller,	Thompson,
Crouch,	Mills,	Townsend,
Dudley, of Solano,	Nason,	Van Voorhies,
Estee,	Ohleyer,	Walker, of Tuolumne,
Estey,	Pulliam,	Webster,
Gregg,	Reed,	Weller,
Harvey,	Rhodes,	Wilson, of 1st District,
Hilborn,	Ringgold,	Winans,
Hitchcock,	Rolfe,	Mr. President—52.
Inman,		

AYES.

Andrews,	Barry,	Bell,
Ayers,	Barton,	Brown,
Barbour,	Beerstecher,	Charles,
Condon,	Holmes,	Moreland,
Cross,	Howard, of Los Angeles,	Morse,
Davis,	Howard, of Mariposa,	Nelson,
Dean,	Huestis,	Neunaber,
Dowling,	Hughey,	O'Sullivan,
Doyle,	Hunter,	Prouty,
Dunlap,	Jones,	Reynolds,
Evey,	Joyce,	Smith, of 4th District,
Farrell,	Kelley,	Smith, of San Francisco
Filcher,	Kenny,	Soule,
Freeman,	Kleine,	Swenson,
Freud,	Lampson,	Tinnin,
Garvey,	Larkin,	Vacquerel,
Glascock,	Larue,	Walker, of Marin,
Gorman,	Lavigne,	Waters,
Grace	Lindow,	Wellin,
Hager,	Mansfield,	West,
Harrison,	Martin, of Santa Cruz,	Wickes,
Heiskell,	McCallum,	White,
Herold,	McComas,	Wilson, of Tehama,
Herrington,	Moffatt,	Wyatt—72.

THE PRESIDENT. The question recurs on the amendment, as reported by the Committee of the Whole.

MR. REED. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section three, by striking out all after the word 'association,' in line five."

MR. REED. Mr. President: This amendment strikes out that portion which is really the Terry amendment. As I understand, this is printed separately, under a misapprehension, and it is all one section, composed of the amendments offered by Messrs. Webster and Terry, and adopted in Committee of the Whole. Am I correct?

THE PRESIDENT. Yes, sir.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. White, Barton, Condon, Larkin, and Dunlap.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Hitchcock,	Shafter,
Biggs,	Inman,	Shurtleff,
Boucher,	Keyes,	Smith, of Santa Clara,
Caples,	Lewis,	Steele,
Casserly,	Martin, of Alameda,	Stevenson,
Chapman,	McConnell,	Stuart,
Charles,	McFarland,	Thompson,
Cowdon,	Miller,	Townsend,
Crouch,	Mills,	Van Voorhies,
Dudley, of Solano,	Ohleyer,	Walker, of Tuolumne,
Estee,	Pulliam,	Webster,
Estey,	Reed,	Weller,
Gregg,	Rhodes,	Wilson, of 1st District,
Harvey,	Schell,	Winans,
Hilborn,	Schomp,	Mr. President—45.

NOES.

Andrews,	Harrison,	Moffat,
Ayers,	Heiskell,	Moreland,
Barbour,	Herold,	Morse,
Barry,	Herrington,	Nason,
Barton,	Holmes,	Nelson,
Beerstecher,	Howard, of Los Angeles,	Neunaber,
Bell,	Howard, of Mariposa,	O'Sullivan,
Blackmer,	Huestis,	Prouty,
Brown,	Hughey,	Reynolds,
Burt,	Hunter,	Ringgold,
Condon,	Johnson,	Rolfe,
Cross,	Jones,	Smith, of 4th District,
Davis,	Joyce,	Smith, of San Francisco,
Dean,	Kelley,	Soule,
Dowling,	Kenny,	Swenson,
Doyle,	Kleine,	Tinnin,
Dunlap,	Laine,	Tully,
Evey,	Lampson,	Turner,
Farrell,	Larkin,	Vacquerel,
Filcher,	Larue,	Walker, of Marin,
Freeman,	Lavigne,	Waters,
Freud,	Lindow,	Wellin,
Garvey,	Mansfield,	West,
Glascock,	Martin, of Santa Cruz,	Wickes,
Gorman,	McCallum,	White,
Grace,	McComas,	Wilson, of Tehama,
Hager,	McCoy,	Wyatt—83.
Hale,	McNutt,	

THE PRESIDENT. The question recurs on concurring with the Committee of the Whole in its amendment.

MR. HAGER. Mr. President: I send up an amendment to section three.

THE SECRETARY read:

"Amend the Terry amendment as follows: Insert after 'association,' in line two, as follows: 'during the time they hold such office;' and strike out all after the word 'association,' in line four."

MR. HAGER. Mr. President; The object of this amendment is to hold the Director responsible only during the term of office of such Director. A Director may be elected for a term of one year. He may hold the office for one month, and resign. The object of the amend-

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ment is to make him liable during the time he holds the office, rather than during the term for which he is elected. A strict construction of it as it is would be during the term of office for which he is elected.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: I am in hopes that this amendment will be voted down. This section don't affect anybody who is doing a legitimate business. Where a company fails, and where their funds are misappropriated, somebody is going to lose it. Now, who is it that the depositors look too? They look to these big figure-heads for protection, and if we do not make them responsible, then the common people, the depositors, have to lose it. I would like to have some rule by which the poor, honest peasantry may be safe. There is nothing to protect them. We want to bring these men down to a point that they have got to be responsible. They are in no danger if they are compelled to do a fair, honest, and legitimate business. If we adopt this amendment we destroy the whole thing. If a Director sees that the funds have been misappropriated and squandered and gone, then he can resign, and would not be responsible, because he has nothing more to do with it, and the depositors have to lose it. Adopt this amendment, and I would not give anything for the whole section. I am in hopes that the Terry amendment will stand.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I hope, sir, that this and all amendments will be voted down. This amendment, if it should prevail, would have this result, as I read the section, that if a Director or Trustee of a corporation finds that the liability of this section is about to attach to him, or that it has already attached to him, he has only to resign his office and escape liabilities. Of course I do not mean to say that the gentleman moving this amendment intends this result, but it seems to me that it will be the inevitable consequence. The language will be as amended:

"The Directors or Trustees of corporations and joint-stock associations, during the time they hold such office, shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation, or joint-stock association."

Now, then, although a Director may be elected for a year or for a specified term, he can always terminate his office by resignation. A vacancy occurs and his liability ceases. I do not think that that is the intention, but that will be the result. If there is to be any mutilating of this let it be openly and plainly done. For one I am prepared to vote for this section just as it reads. It will admit of no two interpretations as it is framed. Its meaning is obvious to the mind of a child. The shrewdest lawyer cannot wrest it from its purpose. I am perfectly prepared to accept the consequences of it with its plain and obvious meaning, notwithstanding all that has been said about its being ridiculous and about its destroying rights. So far as I have heard expression among the people, no other section commends this Constitution to the thinkers of the people of this State as does this provision. I am prepared to vote for it as it stands, for if it is adopted it will have the effect of stopping the high-handed and wholesale thievery and outrage that has disgraced the State of California, and which has called forth the outcry from the people that has evoked this Constitution. It is no new thing in the policy of government. We adopt the principle on which it is rested in a thousand forms, in all the forms of government that exist in the civilized world; in Europe, in America, with the Federal Government, with the State Government, the principle permeates everywhere, that when a trust is created security shall be given for the execution of it. Take your County Treasurer, your Sheriff, your State Treasurer, all of the State officers, with the exception of the highest judicial officers, and so throughout the nation and throughout the world, men who hold moneys and execute trusts are required to give security for the faithful administration of them; and if there be default or loss, except from the act of God, they and their bondsmen are held responsible. Why, sir, there are twenty thousand of these corporations in this State, with at least eighteen thousand five hundred of them centered in San Francisco with their Directorships. Their stockholders and creditors are scattered all over the world, and these persons hold in trust these funds and represent a majority of the wealth of the Pacific Coast. The proposition of this section is to secure a faithful execution of this trust, and those who do not want to assume this responsibility let them stay out. If it is true that it will result in these men not assuming this responsibility their credit will be gone, the funds will be withdrawn, and we shall find the wealth of this coast dispersed back whence it was drawn to be more usefully employed than it is now, in the hands of these few Directorships. They are afraid of this responsibility in San Francisco. Let us adopt this section, and I tell you that the people will adopt it, and they will thank us for giving them the opportunity of doing it. I hope, sir, that this and all amendments will be voted down.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: Nothing that the opponents of the Terry amendment have offered has ever been as unjust, has ever been as infamous, as the proposition which is now made. The proposition now made is to limit the liability of the Directors to the mere time that they were in office, and that makes the matter a great deal worse than it is now; for now if you could show a misappropriation, a fraud, or a negligence, which caused a loss, and the Directors were directly responsible for them, you could prosecute them though they should subsequently resign; but this proposed amendment is that the Directors or Trustees shall, during the term they are in office, be liable. Instead of being an extension of their liability, it is a limit to their liability, and instead of being in the interest of honesty, is opening the door wide to wrong.

MR. HAGER. Mr. President: I ask leave to change my amendment so that it will read as follows: "In line four strike out all after the word 'association,' and insert 'during the time they shall hold office as such Director or Trustee.'"

MR. TOWNSEND. Mr. President: How would it do to make them responsible for the balance of their lives?

MR. HAGER. Mr. President: This is a very simple matter if it is understood by the Convention. I was going to say——

MR. BLACKMER. Mr. President: I rise to a point of order. There is so much noise here that it is impossible to understand anything that is going on.

THE PRESIDENT. The point of order is well taken. The Convention will come to order.

MR. HAGER. If I am not to be permitted to explain the matter I will sit down. My purpose is to perfect this amendment, not to destroy it. There is no trick about the proposition that I offer, and that is very certain; but I say this, that a man may be elected a Director in a corporation, and he may serve for three months; the other Directors may put in some bad man that he is not willing to be responsible for. Now, I ask whether he should be held responsible for the acts of that man after he goes out?

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I see no need for this amendment. It will not be assumed, and Judge Hager himself will not assume on this floor that if a Director or Trustee be elected for a year and resign at the end of one month, that that does not end his term and end his liability. But we do not wish to end his responsibility for acts that have been committed. We want it to end only by the statutes of limitations. This section is good enough as it is. We do not need to define the term of office any otherwise than it is in this section. Judge Hager will not assume that their resignation does not end their responsibility.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: I am astonished at this proposition this morning. I mean to say to the friends of this Terry amendment, that I want you to just stand by your guns, and vote down every amendment you know that is proposed. California looks to you men, to-day, to do your duty, and don't you be misled by these amendments. Now, so far as the word "term" is concerned, every man in this Convention knows exactly what it means. It means during the time that he serves. Now don't be misled. Stand right square up to your work and don't surrender the fortress. I expect you to stand right up and take the Terry amendment, pure and unimpregnated.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I desire to say but a word. It seems to me that in the construction of this amendment the gentleman did not pay attention to the English language. I have no doubt but that the amendment of the gentleman from San Francisco is intended to meet the objection which he points out, but it is placed in the wrong position, and with all the words he has used he has not accomplished his purpose. If you will carefully read the section as he has proposed to amend it, it does limit the liability, and if it should be discovered after he had resigned that a misappropriation had occurred while he was in office he could not be held. It results from placing his amendment with all these words in the wrong place. That is all. It is true that in this section that I propose to support the word "term" of office is used, which I think is bad, and may lead to trouble. We have provided in this Constitution for filling unexpired terms, showing that the word "term" applies to the duration of the office, and not to the time that a man serves. Now, I would limit this to defalcations that occur while the man is actually in office, as in the case of a man, or a guardian or executor's bond. You go upon his bond, and you are responsible while you are on his bond. You may be discharged and cannot be held for his future acts. This whole matter can be made plain, and the section still preserved by an amendment which I shall offer if I have an opportunity. I would strike out the words, "term of office," in the fourth line, and make it so as to read, "during the time such Director or Trustee shall be in office."

MR. HAGER. That is the amendment as I propose it now.

MR. LAINE. Not at all.

MR. HAGER. It says, "during the time they shall hold office as such Director or Trustee."

MR. LAINE. It is in the wrong place. I limit the responsibility to the time it occurred.

MR. HOWARD, of Los Angeles. I would like to ask the gentleman if there is any power in the Legislature to make them responsible for anything that occurred while they were not in office?

MR. LAINE. This is an attempt to do it.

MR. HOWARD. I do not think there could be any quibble in any Court about it.

MR. LAINE. The term of office is one thing, and the time a man serves is another thing.

THE PRESIDENT. The Secretary will read the amendment as proposed by the gentleman from San Francisco, Mr. Hager.

THE SECRETARY read:

"'In line four strike out all after the word 'association,' and insert 'during the time they shall hold office as such Director or Trustee.'"

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

The ayes and noes were demanded by Messrs. White, Barton, Lindow, Grace, and Larkin.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Casserly,	Dudley, of Solano,
Biggs,	Charles,	Estee,
Caples,	Cowden,	Estey,

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Gregg,	McConnell,	Smith, of Santa Clara,
Hager,	McFarland,	Smith, of 4th District,
Harvey,	Miller,	Stevenson,
Hitchcock,	Mills,	Stuart,
Johnson,	Ohleyer,	Thompson,
Jones,	Pulliam,	Townsend,
Keyes,	Reed,	Van Voorhies,
Lewis,	Rhodes,	Weller—34.
Martin, of Alameda,		

NOES.

Andrews,	Herold,	O'Sullivan,
Ayers,	Herrington,	Prouty,
Barbour,	Holmes,	Reynolds,
Barry,	Howard, of Los Angeles,	Ringgold,
Barton,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Shafter,
Bell,	Hughey,	Shurtleff,
Boucher,	Hunter,	Smith, of San Francisco,
Brown,	Inman,	Soule,
Burt,	Joyce,	Steele,
Condon,	Kelley,	Sweasey,
Cross,	Kenny,	Swenson,
Crouch,	Kleine,	Swing,
Davis,	Laine,	Tinnin,
Dean,	Lampson,	Tully,
Dowling,	Larkin,	Turner,
Doyle,	Larue,	Vacquerel,
Dunlap,	Lavigne,	Walker, of Marin,
Evey,	Lindow,	Waters,
Farrell,	Mansfield,	Webster,
Filcher,	Martin, of Santa Cruz,	Wellin,
Freeman,	McCallum,	West,
Freud,	McCoy,	Wickes,
Garvey,	McNutt,	White,
Glascock,	Moffat,	Wilson, of Tehama,
Gorman,	Moreland,	Wilson, of 1st District,
Grace,	Morse,	Winans,
Hale,	Nason,	Wyatt,
Harrison,	Nelson,	Mr. President—89.
Heiskell,	Neunaber,	

THE PRESIDENT. The question recurs on concurring with the Committee of the Whole in the amendment.

The amendment was concurred in.

THE PRESIDENT. The Secretary will read the amendment proposed by the Committee of the Whole, to section five.

THE SECRETARY read:

"SEC. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws; but no corporation, association, or individual shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money."

MR. SHAFTER. Mr. President: I offer an amendment to that.

THE SECRETARY read:

"Strike out all after 'circulation,' in line four, and insert, 'as money, anything but the lawful money of the United States.'"

MR. SHAFTER. Mr. President: It is with very great reluctance that I offer this amendment. It is addressed partly to that portion of the Confederacy called the City and County of San Francisco, and partly to that portion of the Confederacy of the State of California exclusive of that city. The original section contained a provision that the banks might put in circulation the lawful money of the United States; but this section, as it is now proposed, prohibits the banks of this State from putting in circulation the lawful money of the United States; that is, the paper currency of the United States. For one I desire to see this State use the money of the United States Government, issued under the Constitution and laws of that Confederacy, as lawful money. I think we should do the United States Government the courtesy of using its money until we entirely separate from them in business matters and commercial interests. If it was a nation, we might be under different circumstances.

MR. LAINE. Mr. President: It seems to me that the amendment is somewhat ridiculous. No bank of this State issues the money of the United States, nor does it put it into circulation; the Government does that; but it circulates it after the Government has put it into circulation.

MR. JOHNSON. Mr. President: I hope this amendment that is proposed by the gentleman from Marin will not be adopted, because it will entail upon us the difficulty suggested by the gentleman from Santa Clara. We cannot make the lawful money of the United States. The difficulty recurs by retaining the word "make." I am fully in sympathy with the idea in the argument of the gentleman from Marin, and therefore I am in favor of the substitute which was adopted by the Committee of the Whole. Now, that substitute eliminates the objectionable matter, and is as follows:

"SEC. 5. The Legislature shall have no power to pass any Act granting any special charter for banking purposes, but corporations or associations may be formed for such purposes under general laws; but no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States."

Now, sir, under the laws of the United States, we circulate the money of the United States. It is not necessary to say anything about that. It is a part of the law of California, and therefore I say that this amendment should not be adopted; and if it is not, I would like to offer a substitute when it is in order.

MR. HOWARD, of Los Angeles. Mr. President: I hope the amendment proposed by the gentleman from Marin will be adopted, and I congratulate him in coming back to the good old States' rights doctrine.

MR. SHAFTER. I wish to withdraw the amendment. [Laughter.]

MR. HOWARD. I object to its being withdrawn. We have got him on our secession side, and I propose to hold him. I am in favor of the amendment, because, according to what I think is a tolerably well settled construction of the Constitution of the United States, nothing is lawful money but gold and silver. That was settled at a very early date. It is true that the Supreme Court have since waltzed around a little, but they did it on the ground that greenbacks was a war measure, and they have never decided that it was money, except as a war measure, and that was also the decision of the Supreme Court of this State; and therefore, as gold and silver are the only legal money of the United States, and, of course, the only legal money of this State, as the great producers of gold and silver, it is clearly our interest to keep them in circulation as currency. I am glad my friend from Marin has come over, and I will give him the fraternal embrace of secession.

MR. SHAFTER. Mr. President: I ask for the ayes and noes upon this proposition. The words "the lawful money of the United States" includes gold, silver, and greenbacks, and when this Convention struck that out they did it for a purpose. The gentleman who moved it did it for a purpose, and I do not choose to let that purpose go unchallenged. Here are these words, "make, issue, and put in circulation." To make is one thing, to issue is another, and to put in circulation is another still. The words are used *ex industria*. My friend from Santa Clara is utterly in error in his construction of it. The whole world would understand that when we struck out the words "except the lawful money of the United States," it was done for the purpose of disparaging the greenback currency, and could not be done with any other object. With these views I call for the ayes and noes.

The ayes and noes were also demanded by Messrs. Jones, Evey, Cross, and Wyatt.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Harvey,	Ringgold,
Barbour,	Herold,	Rolfe,
Barry,	Hilborn,	Schell,
Barton,	Hitchcock,	Schomp,
Beerstecher,	Howard, of Los Angeles,	Shafter,
Belcher,	Howard, of Mariposa,	Shurtleff,
Bell,	Huestis,	Smith, of Santa Clara,
Biggs,	Hughey,	Smith, of 4th District,
Blackmer,	Inman,	Smith, of San Francisco,
Boucher,	Jones,	Soule,
Burt,	Joyce,	Steele,
Caples,	Kenny,	Stevenson,
Casserly,	Keyes,	Stuart,
Chapman,	Kleine,	Sweasey,
Charles,	Lampson,	Swenson,
Condon,	Larue,	Swing,
Cowden,	Lavigne,	Thompson,
Cross,	Lewis,	Tinnin,
Crouch,	Lindow,	Townsend,
Davis,	Mansfield,	Tully,
Dean,	Martin, of Alameda,	Turner,
Dowling,	Martin, of Santa Cruz,	Tuttle,
Doyle,	McCallum,	Vacquerel,
Dudley, of Solano,	McConnell,	Van Voorhies,
Dunlap,	McFarland,	Walker, of Marin,
Estee,	McNutt,	Walker, of Tuolumne,
Estey,	Miller,	Waters,
Evey,	Mills,	Webster,
Farrell,	Morse,	Weller,
Filcher,	Nason,	Wellin,
Freeman,	Nelson,	West,
Freud,	Neunaber,	White,
Garvey,	Ohleyer,	Wilson, of Tehama,
Gorman,	Pulliam,	Wilson, of 1st District,
Gregg,	Reed,	Winans,
Hager,	Reynolds,	Wyatt,
Harrison,	Rhodes,	Mr. President—111.

NOES.

Andrews,	Holmes,	Larkin,
Brown,	Hunter,	McComas,
Glascock,	Johnson,	Moreland,
Grace,	Kelley,	O'Sullivan,
Heiskell,	Laine,	Prouty—16.
Herrington,		

THE PRESIDENT. The question recurs on concurring in the amendment of the committee as amended.

Concurred in.

THE PRESIDENT. The Secretary will read the amendment proposed by the Committee of the Whole to section six.

SPECIAL OR EXCLUSIVE PRIVILEGES.

THE SECRETARY read:

"SEC. 6. All special or exclusive privileges, whether claimed by general laws or by special grants, shall have no validity, unless such claim for special or exclusive privilege shall have been appropriated, by occupancy and organization, and business commenced in good faith, before the adoption of this Constitution."

MR. HERRINGTON. I have a substitute to offer.

THE SECRETARY read:

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"SEC. 6. All existing charters, franchises, and special or exclusive privileges, whether claimed under general laws or special grants, shall have no validity, unless such special or exclusive privileges and franchises shall be appropriated and exercised by the grantees thereof, and organization and business under said charters, laws, and grants commenced in good faith before this Constitution takes effect."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President and gentlemen of the Convention: I call attention to the peculiar wording of this section six, as amended in Committee of the Whole upon the motion of the gentleman from Marin, Mr. Shafter:

"SEC. 6. All special or exclusive privileges, whether claimed by general laws or by special grants, shall have no validity, unless such claim for special or exclusive privilege shall have been appropriated by occupancy and organization and business commenced in good faith, before the adoption of this Constitution."

It leaves out, Mr. President, "charters" which ought to be in there. The latter clause says: "before the adoption of this Constitution." In my judgment it ought to be, when this Constitution takes effect. It will give timely and ample notice to the parties, that they must commence their operations and be organized at that time. By the time we are through our business here we will have, perhaps, reached the first of March. It will only be two months until the first of May, and if this Constitution is adopted the first of May, there will be numbers that are perhaps interested in franchise and in charters of corporations that will perhaps not be aware even of the provisions of this Constitution requiring any such organization to be entered upon, or any such occupancy to be made. Many of them, perhaps, may not be apprised of it even within a week of the time that they would be called upon to vote upon the provisions of this Constitution. I think, therefore, that the substitute ought to be adopted, as avoiding the possible and almost certain difficulty that will arise from the working of this section as presented by the gentleman from Marin. Undoubtedly the clause that follows has reference to the word "claim," and does not have reference to the special grants and privileges that are mentioned in the first part of the section. I am satisfied that it was intended to have it refer to the special grants and privileges, but it does not so refer.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: This was drawn in very great haste, indeed, for the purpose of preventing, according to the supposed idea of the Convention at that time, an idea very preferable to that in the original section itself. If the section itself, as it stands, is subject to the exception made, it can all be remedied by striking out the words "claim for." But the real point of the gentleman from Santa Clara, Mr. Herrington, is as regards the time that this is to operate. This amendment proposed by me was the result of the discussion upon that question at that time. There were several gentlemen from the mining districts commented upon the propriety of the time at which these claims ought to be perfected, and advocated a brief period of time. That is a question of expediency. The object is to cut off these spurious organizations that do not intend to do anything. The time is a matter of judgment upon which other gentlemen are better informed than I am. Certainly a brief time should be allowed to perfect these claims. There are a vast number where nothing at all has been done, except to organize, and perhaps to collect the first ten per cent. The quicker they are terminated the better. However, it is a question to be submitted to the discretion of this body. I think as it is, it will be a sufficient notification to these people to go to work and close up these corporations; either disincorporate and go out of that form of business, or else go on with the commencement of business.

THE PRESIDENT. The question is on the adoption of the substitute of the amendment offered by the gentleman from Santa Clara, Mr. Herrington. The Secretary will read it.

THE SECRETARY read:

"All existing charters, franchises, and special or exclusive privileges, whether claimed by general laws or special grants, shall have no validity, unless such special or exclusive privileges, charters, or franchises shall be appropriated and exercised by the grantees thereof, and organized business under said charters, laws, or grants commenced in connecnection with them before this Constitution takes effect."

The amendment was rejected on a division, by a vote of 36 ayes to 61 noes.

MR. McCALLUM. I desire to offer an amendment.

THE SECRETARY read:

"Add to section six, 'this section shall not be construed to legalize any special or exclusive privilege which is otherwise invalid.'"

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: This is a question which was presented in Committee of the Whole, and received very little attention there. I believe it was not discussed, although I think it may have been referred to. But I submit that it is no question of mere phraseology. In this case we can trust something to the Committee on Revision. Now, I ask the attention of the Convention to the reading of the section as it stands:

"SEC. 6. All special or exclusive privileges, whether claimed by general laws or by special grants, shall have no validity, unless such claim for special or exclusive privilege shall have been appropriated, by occupancy and organization, and business commenced in good faith, before the adoption of this Constitution."

Now, as regards those which have been so appropriated, the assertion of the one is the exclusion of the other, and the point is that by declaring that those in which there has not been an appropriation, by occupancy and organization, shall have no validity, all others are made legal, as the Constitution is silent with reference to them. This is a point which has been so frequently presented to this Convention and go undisputed, that it would seem to be unnecessary to consume time in arguing it here. I submit that if we adopt the section as it is we will have done great harm. If we adopt it with this saving clause I think we will have accomplished much good.

MR. ESTEE. Mr. President: It strikes me that there is no end to human endurance. The idea of putting something into this Constitution stating that this section shall not be construed to legalize that which is already illegal or invalid. I do not propose to discuss the question, but the necessity for such a provision, it strikes me, is entirely beyond the comprehension of a lawyer, and I am amazed that the gentleman should have presented it.

MR. HOWARD, of Los Angeles. Mr. President: I am also opposed to it, because, according to the newspapers, the public are sufficiently disposed to make fun of us now, and they would have just ground to do it if we should adopt this.

MR. WATERS. Mr. President: I think the idea sought to be arrived at is a good one, but he has it in the wrong language. The amendment should read in this wise: "but this shall not revive lapsed or forfeited franchises." I think we ought to say that the franchises that have already lapsed should not be revived by this. The franchises may be legal, but they are lapsed, they are forfeited. They are legal in the first place. Now, saying that they are illegal is a contradiction of terms, but if we should say, directly, that this shall not be construed to revive lapsed or forfeited franchises, then I think we should express our intention. That is an amendment I desire to offer.

MR. WINANS. Mr. President: It appears to me that the fundamental objection to the proposed amendment is this: If this doctrine is to be accepted that the expression of one is the exclusion of the other as regards this section, the evil is aggravated to a fearful extent by the application of the same doctrine to the whole Constitution. By asserting in this section that it is not to be construed to legalize what is otherwise invalid, you declare in regard to the rest of the Constitution that it is intended to legalize what is otherwise invalid.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. McCallum.

The ayes and noes were demanded by Messrs. McCallum, O'Sullivan, Grace, Herrington, and Beerstecher.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Filcher,	McNutt,
Barbour,	Glascock,	Mills,
Barry,	Gorman,	Moffat,
Barton,	Grace,	Moreland,
Beerstecher,	Hager,	Morse,
Belcher,	Harrison,	O'Sullivan,
Bell,	Herold,	Smith, of San Francisco,
Biggs,	Herrington,	Soule,
Blackmer,	Howard, of Mariposa,	Stevenson,
Boucher,	Huestis,	Sweasey,
Casserly,	Hunter,	Turner,
Condon,	Inman,	Tuttle,
Cowden,	Joyce,	Vacquerel,
Cross,	Kenny,	Walker, of Marin,
Dean,	Kleine,	Weller,
Dowling,	Lavigne,	Wellin,
Doyle,	Lindow,	Wickes,
Dudley, of Solano,	Mansfield,	White,
Estey,	McCallum,	Wyatt—59.
Farrell,	McComas,	

NOES.

Ayers,	Laine,	Schomp,
Brown,	Lampson,	Shafter,
Burt,	Larkin,	Shurtleff,
Caples,	Larue,	Stuart,
Charles,	Lewis,	Swenson,
Crouch,	Martin, of Alameda,	Swing,
Davis,	Martin, of Santa Cruz,	Thompson,
Dunlap,	McConnell,	Tinnin,
Estee,	McCoy,	Townsend,
Garvey,	McFarland,	Tully,
Gregg,	Miller,	Van Voorhies,
Harvey,	Nason,	Walker, of Tuolumne,
Hilborn,	Nelson,	Waters,
Hitchcock,	Prouty,	Webster,
Holmes,	Pulliam,	West,
Howard, of Los Angeles,	Reynolds,	Wilson, of Tehama,
Johnson,	Rhodes,	Wilson, of 1st District,
Jones,	Ringgold,	Winans,
Kelley,	Rolfe,	Mr. President—58.
Keyes,		

MR. WATERS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by adding the words, 'but this shall not revive lapsed or forfeited franchises.'"

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I wish to address the house one moment upon this question. Now, there has an amendment been adopted to the effect that section six, as reported by the Committee of the Whole, should not revive any forfeited privilege or franchise. Now, the gentleman from San Bernardino proposes another amendment, to the effect that any franchise that has lapsed shall not be revived or given validity

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to. Now, I wish to say that it is quite unnecessary to incumber this section in this way. Now, does it not read correctly in connection with the other amendment? I make this objection, because I think that it is highly unwise for this Convention to amend a section that has gone through the deliberation of the Committee of the Whole, unless it meets some clear, distinctive, marked evil, so clear, positive, and well known that we cannot be mistaken. Now, the amendment that has already been adopted certainly accomplishes whatever is sought by this, which I think amounts to nothing. But it has been adopted, and when you read the amendment of the gentleman from San Bernardino in connection with the amendment that has already been adopted, it does not make sense.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. President: Now, this section as it originally stood in Committee of the Whole, would have the effect of reviving every old franchise that has lapsed or become forfeited. That was the known result of it at the time it was adopted. But it was adopted hastily, and any gentleman who recollects the circumstances will know it. Now, all I propose to try to do is to place this language so that it cannot bear that construction. The amendment offered by the gentleman from Alameda does not cover it. The language which he proposes to insert is so that it shall not legalize franchises which were illegal in their incipiency. I propose that these lapsed or forfeited franchises shall not be revived even though they were legal in the first place. Now, that is the object. If it is not expressed in clear language I would recommend that the gentleman from San Francisco be placed upon the Revision Committee, and then he can make it conform to the rest of the section. We can leave that to the Revision Committee. But I would ask leave to insert the word "nor" instead of the word "but."

THE PRESIDENT. If there be no objection the word will be changed. The Chair hears none.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I dissent utterly from the law of the gentleman from Alameda, and the gentleman from San Bernardino. I say that the rule cited does not apply here at all. They are entirely mistaken upon that point, and I defy the gentleman to point to a solitary case that bears him out. I admit that where a man sits down and undertakes to enumerate something that he is going to sell, that the enumeration of some things excludes others that he may have forgotten to insert. Here is a declaration that a certain class of claims shall not be valid unless certain acts are done before a given time, and I deny that the principle referred to has any application. You are cluttering up the section without doing any good. Both amendments fall under the same principle. I hope that this last amendment will not be adopted, and that the other will be stricken out when we get into the next stage of the bill.

MR. CROSS. Mr. President: I desire to offer an amendment which reads as follows: "The section as it was now amended by adding: 'Nothing in this section shall be so construed as to interfere with the business of the day of judgment, or raise the dead.'" [Laughter.]

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: I understood the gentleman, whom I believe is the author of this section six, to state in the forepart of the discussion that he had been unable to give much attention to it, and had drawn it in haste. Its language bears evidence of that fact, although I admit that, so far as the affirmative principle of it is concerned, it expresses the object sufficiently. I now say that not only under that rule which has been referred to, that the including of the one excludes the other, but on account of the peculiar phraseology it is plainly implied in this section. I submit that I read it correctly when I say that it amounts to this—that they shall have no validity unless in certain cases. In the other cases they have validity. Now, the point made by the gentleman from San Bernardino is one of the points I seek to accomplish, and I suppose is accomplished. I have no objection except to the use of so many more words in adding that to it. My judgment is that the language of the amendment which has been adopted would cover it; and yet, if there is any danger whatever, inasmuch as the amendment of the gentleman occupies but little space, I do not see any particular reason why it should not be adopted. As to the criticism of the gentleman from San Francisco, Mr. Estee, if he could have thought of the single word "nor," as has been inserted, he would have found that it would read perfectly simple, as it now is provided that the amendment should be adopted. I have no objection to the amendment, myself, and I am not sure that it is really necessary, but if there is any doubt I shall vote for it.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from San Bernardino, Mr. Waters.

The amendment was rejected.

MR. HERRINGTON. Mr. President: If the Committee on Revision and Adjustment has the power to adjust the section by striking out words and changing the sense of it, I do not desire to offer this amendment; but unless they possess that power I desire to move to strike out the words "claim for."

THE PRESIDENT. The chair will decide that question when it comes up.

MR. HERRINGTON. Then I offer that amendment.

THE SECRETARY read:

"Strike out the words 'claim for,' in the second line."

MR. SHAFTER. I concur in the criticism, Mr. President.

The amendment was adopted.

THE PRESIDENT. The question recurs on concurring with the Committee of the Whole in their amendment to section six.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope the Convention will not concur in the report of the Committee of the Whole, because I do not believe that it is an improvement upon the section reported by the Committee on Corporations other than Municipal. Now, I hope, that the Chairman of the Committee on Corporations will stand by this section as reported. I do not remember the proceedings in Committee of the Whole by which this substitute was adopted, nor the reasons given, and I am unable to conceive of any reasons, and I defy any gentleman here to point out to me wherein the section reported from the Committee on Corporations does not fully and completely cover the whole ground and carry out the intent, which is to wipe out all these existing franchises and charters which have not been used and appropriated. The language is broader and better than the substitute reported by the Committee of the Whole. The language used is as follows:

"SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

We picked out the best we could and reported it accordingly. It is nearly the language of the Constitutions of Pennsylvania, Missouri, Illinois, Colorado, and all of the States that have held late Conventions. Now, why it is that the Committee of the Whole reported a section leaving out the word "charters," I do not know. I insist that the section as reported by the Committee on Corporations is better than the one reported by the Committee of the whole, and I hope that the Committee will not concur.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I think that the gentleman from San Francisco, Mr. Barbour, is right. I think the section reported by the Committee of the Whole is better than it is as it now stands, and I am of the opinion that the original section as reported by the Committee on Corporations other than Municipal, is far preferable to the section as it now stands, as amended by this Convention and in the Committee of the Whole.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: It is difficult to see wherein the substitute for section six is an improvement upon the original. It certainly is narrower and more limited in its scope, and fails therefore to reach the entire extent of the evil sought to be guarded against. Furthermore, as it now reads, it says: "Unless such privilege shall have been appropriated by occupancy." Now, how are you to occupy a privilege? I think the language is entirely defective in expressing a sound and sensible idea. It was not so as it emanated from the hands of the honorable member from Marin, but by the amendment. The original section reported by the committee is far more extensive in scope; far more general in application; far more capable of running into all the varieties and conditions of the subject, and reaching all that character of grants, charters and franchises which lies latent now for want of use, although it has been made the subject of legislative grant. For that reason I am in favor of the original section as reported by the committee.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: The gentleman from San Francisco, who has just been upon the floor, has said, that it is very difficult to see how the substitute is any improvement upon the report of the Committee on Corporations. I would add that it is impossible to see any improvement upon it; and I am happy in this case to agree with the three gentlemen from San Francisco upon this subject. I am convinced that the substitute here has been so amended and changed and beclouded, that it is out of the question for it to subserve any good purpose, and may in certain respects be very mischievous in its effects. But it appears to me that section six as it was originally reported by the committee is clear, full, forcible, and explicit, and it covers the ground that was intended; whereas the other, by various changes, does not even read well, and is far from the object of a majority of this committee. I am therefore in hopes that section six will pass as originally introduced by the Committee on Corporations.

THE PRESIDENT. The question is on concurring——

MR. HALE. Mr. President: I would inquire whether it would be competent for us at another stage of proceeding to strike out the amendment which has been made now in Convention to the section as it came from the Committee of the Whole.

THE PRESIDENT. The article will be subject to amendment after its second reading.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: Then I hope that section six, as reported by the Committee of the Whole, will not be voted down; it is preferable to the original section in this. If I am not mistaken, it was pointed out in Committee of the Whole. The original section provides:

"SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

Now, then, it was pointed out, if I am not mistaken, in a case of this kind. The Code provides that the first step in appropriating water in the streams of this State, shall be by location—by a publication of notice of location. Within the time thereby limited, forty days, I think it is, actual work in the construction must be commenced and continued uninterruptedly, except for some cause, until completion, else the right to the original appropriation shall be lost as in favor of one subsequently appropriated and continuing according to the requirements of law. It was suggested that it might occur, that at the time of the adoption of this Constitution, that period might be running between the original act

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of location and the subsequent acts necessary to complete and perfect the location, and that in this way the word "occupancy" was properly used. The substitute, as reported by the Committee of the Whole, reads:

"SEC. 6. All special or exclusive privileges, whether claimed by general laws or by special grants, shall have no validity, unless such claim for special or exclusive privilege shall have been appropriated by occupancy and organization, and business commenced in good faith, before the adoption of this Constitution."

Now, the amendment striking out the words "claimed for," was proper, but the other amendment did not improve, it really mars it. Whatever is unnecessary is very likely to be pernicious. It would be competent for us, on the second reading of this article, to retain the section reported by the Committee of the Whole without that amendment, and I believe it would be an improvement upon the section as originally reported by the Committee on Corporations. Upon the assumption that we can make that correction, I shall vote to retain it.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: The gentleman from Placer correctly states the argument used in Committee of the Whole in regard to this section, and I recollect of his speaking of the water question at the time. Now, these water companies have gone and appropriated water by making surveys and notice of location. They have commenced business by paying a surveyor. They may have organized and talked about contracts, and commenced business by collecting money to meet expenses, but they have not struck a stroke, and they will not strike a stroke for ten years. They will let it lie right there until they get ready to sell it, or until they get ready to do something else, and make something out of it. Now, if the word "occupancy" is not the proper one, it is simply a criticism, and nothing else. The term itself is intended to represent the actual fact of going into possession; not only of organizing and carrying on business, but going into possession. The original section excludes that idea. That is the only evil there is to be looked out for. We cannot divest them of any rights they may have acquired if we should try to; but we can compel them to go forward and do what they profess they intended to do—occupy the property, and supply the people with water, or anything else for which they have been granted these privileges. Otherwise they may let it lie right there. When the article comes up for second reading there will be no difficulty in retaining the section reported by the Committee of the Whole, and striking out this piece of nonsense which has been adopted.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I am in favor of the section just as reported by the Committee on Corporations. There appears to be a trimming down of this section, just so as to eliminate the words, "charters, grants, franchises," retaining only the words, "special and exclusive privileges." Now, I see no use in eliminating these words. If these companies have commenced business, they are protected by section six. There is no use at all, on account of a tender regard for these corporations or companies, for us to cut down section six, so as to adapt it to their convenience. Section six was good enough as it stood; and although I believe as a general thing the Committee of the Whole acted wisely in their amendments, yet I do not concur in this amendment, and I hope that section six as originally reported will be adopted.

MR. WEST. Mr. President: I hope that section six, as reported by the Committee on Corporations, will be adopted. These companies assume these privileges under an agreement to commence business in good faith. Now, the very fact that they let them lie for five, ten, or twenty years, shows that business has not been commenced and carried on in good faith, and they are justly entitled to forfeit their franchises.

THE PRESIDENT. The question is on concurring with the amendment of Committee of the Whole as amended.

The amendment was rejected.

THE PRESIDENT. The amendment as reported by the Committee of the Whole is rejected. The Secretary will read the amendment proposed by the Committee of the Whole to section eight.

EMINENT DOMAIN.

THE SECRETARY read:

"SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies at their own valuation, as made for the purpose of taxation, and subjecting them to public use the same as the property of individuals; and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State."

MR. ESTEE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'companies,' in line three, up to and including the word 'taxation,' in line four."

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: That proposed amendment strikes out the words "at their own valuation, as made for the purpose of taxation." That section was placed in the report of the Committee on Corporations for the purpose of allowing the Legislature to provide for taking the property, including the franchises that may have been granted to corporations, for public use. Now, the Committee of the Whole amended that by adopting a new section in its place, and in that new section they inserted these words among others, "at their own valuation, as made for the purpose of taxation;" that is, that the Legislature is allowed to take private property and franchises of incorporated companies at their own valuation, as made for the purpose of taxation. My objections to that are, first, that corporations nor individuals never have made the valuation of their property for the purpose of taxation. It is an impossibility under the provisions of this Constitution. It is done by the Assessor and not by the company. Secondly, they have no day in Court, and it would be in direct controvention of section fourteen of the bill of rights, as adopted by this Convention, which provides the manner of taking private property for public uses. That is my first objection, that the valuation is not made by themselves for the purpose of taxation under the statute or under the Constitution, except personal property. Real property is always assessed by the Assessors who are elected for that purpose. And I hope that the amendment will be adopted for the other reason, that it would raise a very great question, whether valuation fixed by the County Assessor, as to the value of a man's property to be taken for public uses, would stand. I apprehend that every person is entitled to his day in Court.

MR. HALE. Is it not within the scope of the article on taxation that the party has simply to give a list of property, and that the Assessor or the State Board of Equalization are to fix the value?

MR. ESTEE. That is what I say. They do not fix their own valuation on the property for the purpose of taxation. We have expressly provided that they shall not fix the valuation; the people are going to fix the valuation.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I presume the Legislature might pass a law requiring every man to give in a list of his property at its valuation, and I believe that this Constitution does provide that every person shall, on the first of March, give in a list of all his property; but if the Assessor were to take that valuation as given, still this would be a most unjust and unfair provision, and I hope that the amendment will prevail, or else that the Convention will refuse to adopt the amendment of the Committee of the Whole. We all know the proceeding by which the right of eminent domain is exercised. When property is needed for public uses we have to go into Court and determine the value of property upon testimony. That would be the rule even if you adopt this section, except as to corporations. And it provides that where the property of a corporation is to be taken there shall not be any hearing; they shall not be confronted with any witnesses, but simply go to the assessment roll, and that shall be the valuation. For instance, here are two mining companies, owning adjoining grounds presumed to be of the same value, one incorporated and the other not. It becomes necessary to take a portion of each for public uses. In the one case the party has a right to go into Court and have the valuation fixed upon the testimony of witnesses. In the other case you go to the assessment roll. Take two water companies, and it is the same. Why don't you apply the same rule to both. Take the case of two ferries, one incorporated and the other not, each using and owning property. In the one case the party has a right to go into Court, and in the other case he has not. Now, how unjust and unfair that is. More than that, property frequently rises in value between one year and the next. Property in land frequently rises to a very great extent during the lapse of one year. Under this rule, if that land happens to be owned by a corporation, the public could take it for public uses, for the benefit, really, of some other corporation, by going back to the assessment roll of the year previous and having that to be the standard upon which the valuation shall be fixed. We all know that while theoretically property is supposed to be assessed at its real value, that it has never been and never will be in the course of human events. There is no property in any part of this State really assessed at its full value. It is a peculiar habit among Assessors, and I suppose it is fair enough, if they equalize it properly. Under this section, if property happens to belong to a corporation, they are bound absolutely by the assessed valuation; and other men, having the same kind of property, who do not happen to be associated as corporations, have a right to have the value of their property determined in the usual way. I hope the amendment will prevail, or else that the original section will stand.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: For once I find myself in accord with my friend Judge McFarland. The Judge has reasoned logically, rationally, and justly against the proposition to establish a special rule for the exercise of the right of eminent domain in the case of condemnation of corporate property. He has argued from a standpoint which has reason and common sense for its base, and I heartily concur with him. But, Mr. President, it is not necessary to argue this question from that standpoint, because the proposition contained in the section as amended in Committee of the Whole is utterly inadmissible. It is an attempt to do that which we cannot do. The law of eminent domain, as defined, is unchangeable. It is an inherent, unalienable right of political sovereignty. It is a right that is fixed and cannot be changed. Now, Mr. President, what are the facts in this case? The proposition here is to substitute a special rule, different and distinct from the general rule, for the condemnation of property of corporations. Can you do it? that is the question. I say, Mr. President, that we cannot do it, and I propose to read from one of the greatest lights that America has ever produced—Daniel Webster. His definition of——

THE PRESIDENT. The hour having arrived, the gentleman will suspend his remarks until after recess.

LEAVE OF ABSENCE.

MR. MCCALLUM. Mr. President: I desire to ask indefinite leave of absence on account of sickness in my family.

THE PRESIDENT. The gentleman has leave.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

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AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

EMINENT DOMAIN.

THE PRESIDENT. The question is on the amendment of the gentleman from San Francisco, Mr. Estee.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. President: Section eight, as amended by the Committee of the Whole, proposes the establishment of a special rule, for the condemnation under the statute—the right of eminent domain of corporate property. I certainly think the State cannot do this. Corporate property, as well as all other property, may be condemned for a public use under and by virtue of the State right of eminent domain, but it must be done in accordance with law, and subject to and within that clause of the United States Constitution, declaring that no man shall be deprived of life, liberty, or property, without due process of law. Now, what is due process of law? I say that a special rule for the condemnation of that kind of property is not due process of law. It is defined by Webster, in the Dartmouth College case, as rendering judgment only after trial. The meaning of this is that every citizen shall hold his property under the protection of general rules which govern society. Now, sir, this is not a restriction, not a condemnation, not a taking away of any part of the State right. Nor could it be possible to do it, for the reason that this is an inherent right of sovereignty. It is one of the necessary attributes of the sovereign power, and the State has that power, and we can neither enlarge it nor abridge it. It is a right of itself, and it is impossible for this Convention either to enlarge it or diminish that well defined and well understood power. But, sir, if it were possible for us to do this thing, it is not desirable that we should do it. Why do we seek to establish a special rule for the condemnation of the property of corporations? Admit, for the sake of argument, that we have the power to do it, why should we do it? I hold if it were possible to do it that it would be an act of gross injustice upon the face of it. I say this whole section is unnecessary. It is surplusage. It proceeds upon the hypothesis that the Legislature may fritter away the State's right of eminent domain, so that it may not have power to condemn corporate property for public use. That is a mistake, for there is no power to take away this power on the part of the State. I propose, in conclusion, to read from Cooley's Constitutional Limitations. He says:

"When the existence of a particular power in the government is recognized on the ground of necessity, no relegation of the legislative power by the people can be held to vest authority in the department which holds it in trust to bargain away such power, or to so tie up the hands of the government as to preclude its repeated exercise, as often and under such circumstances as the needs of the government may require."

It has already the power. The State has ample power to take the property of a corporation the same as the property of an individual, but it must conform to a general rule, which comes within the prohibition of the Constitution of the United States. The very essence of law is uniformity—a rule that operates justly upon all alike. I am in favor of the amendment proposed by Mr. Estee, to strike out the obnoxious portion of this section, because it is unjust, illegal, unconstitutional, and revolutionary. I favor that amendment which proposes to strike it out.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: I would like to explain an amendment which I propose to put in if I have a chance. It seems to me that the clause proposed to be stricken out by the gentleman from San Francisco, Mr. Estee, needs correcting, for the reason that it does not accomplish what its friends intended to accomplish, because they may fix their own valuation. They are not bound to fix a valuation for the purpose of assessment. Now if the word "assessed" were inserted in line three, it would make it read better. It would reach the object intended. The Assessor would, under the old law, be bound to make the assessment. But if it was left to the companies to make it they certainly would make the assessment to suit themselves, wherever they could make anything by it. There might be many chances to put a high valuation upon it. The additional taxes that they might have to pay would not be so much as they might be able to make by the condemnation.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: There are two or three series of corporations whose property is liable to be taken. I suppose the assessment would be fixed by the State Board of Equalization. But there is other property belonging to other classes of corporations, such as water companies, liable to be taken for public use. When I offered my amendment on the article on Revenue and Taxation, I had two objects in view, one of which was to bring them up to something of a correct valuation for the purpose of taxation; and the other was that it should be taken as an estimate, which is competent for the State to take, as it is their own estimate made under oath. Now we are accused, at least the gentleman from San Francisco was accused, because he proposed to authorize any city to purchase waterworks, of trying to insert a provision in the Constitution compelling the purchase of Spring Valley at high rates. Now the gentleman comes forward and moves to strike out a proposition which enables the city to take these works at their own valuation. I believe it has never been rated higher than six million dollars, but when they were going to sell to the city it was fifteen million dollars. Now if they are willing to make returns under oath that this is the value of their property, I can see no objection to retaining it. It would not be in conflict with other provisions of the Constitution in regard to the condemnation of property. I think there ought to be a correction made, however, if it is not striken out.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. President: There is one difficulty about the execution of this provision as it stands. Under the bill of rights we have adopted, it requires the intervention of a jury to settle the question of damages when property is to be taken for public use. This is property to be taken for public use. As far as the rate of taxation is concerned, that is fixed by the State Board, so far as railroads are concerned. Now, if this should be the rule, that the property should be taken at their own valuation, and they made none, it could not be taken. If they made none, then it would be the duty of the Assessor to make it; and that is the law now. I had some tide lands, and I never made any valuation, and never heard anything about it until I heard it had been sold for taxes. Then, in case no valuation was placed on the property by the owner, this section would not be applicable, as far as I can see. Now, if the provision should read, that when the jury come to fix the valuation they shall take into consideration the valuation fixed upon it by the owner, that might do. Now, the Legislature does not take property as a Legislature; they pass laws by which it may be taken. The word "Legislature" ought to be left out. Now, if you say they shall take it at their own valuation made for the purposes of taxation, the question arises, can you take it at any other valuation? And suppose they do not make any valuation; you cannot take it by the Assessor's valuation. Therefore, I think the section is wrong. But if it is so arranged that when the jury come to assess the value they shall take the owner's valuation, for purposes of taxation, into consideration, that might do.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. President: I think it is dangerous and wrong to allow these words to remain in this section. I think they ought to be simply stricken out. It is no doubt the intention to allow the Legislature to take property, to exercise the right of eminent domain, the same as corporations are allowed to do, and to take property from them for public use; that is all right, but my objection goes to that portion which the gentleman moves to strike out. It says it may be taken at their own valuation for purposes of taxation. Now, it may be that they will never be allowed to make a valuation. The Assessor and Board of Equalization may make it. The assessment of the Assessor cannot always be taken as a criterion. A mining company might have ten acres of ground which is assessed at what it is apparently worth. The next week after, a rich deposit of gold or silver is discovered on the ground, which makes it worth ten times what it was assessed for. I suppose the owner of the mine is honestly entitled to the enhanced value, and yet, if it were to be condemned for public use, he could only receive the assessed valuation, according to this proposition.

Another hardship might result. In large tracts of land we have made provision that it must be assessed in quantities of not more than six hundred and forty acres. It is probable that no tract of land, not containing more than six hundred and forty acres, will be divided up. Now, the company may have fifty acres of land in one tract, and that may be very valuable, the most valuable in the whole tract, while the other may be almost worthless. But under this provision no Assessor is authorized to assess that except in one assessment. Perhaps it is assessed at ten dollars an acre. That might be a fair average, and still the larger part of it might not be worth one dollar an acre, while a few acres might be worth one hundred dollars an acre. So, ten acres of that good land might be taken for ten dollars an acre. On the other hand, that part which the State takes might not be worth five cents an acre, and still they would have to pay at the rate of ten dollars an acre for it. In some instances these things might work a great hardship. There is no equality about it. There might be good reason for it, when taken in connection with the Spring Valley Water Company, in the City of San Francisco, but we do not want to perpetrate a great wrong upon every company and every individual in the State for the purpose of aiming a blow at Spring Valley. I say the only just and proper course is to place corporations upon an equal footing with individuals. Section three, of this article, was supported this morning on the ground that corporations ought to be placed on the same basis as individuals in regard to responsibility. If that was good argument then, it ought to be good argument now. If property is to be taxed, it ought to be paid for at a fair valuation, and this ought to be determined by a jury, after hearing sworn testimony. Now, it is a well known fact, that property, whether of individuals or corporations, is not assessed at its full value. If we get property assessed at seventy-five per cent. of its true cash value, we will be doing better than any State ever did do yet, and if the Assessor does not assess property at its full value, then he is the one that is to blame. The Assessor has one duty to perform when he assesses the property of individuals or corporations. The Boards of Equalization have another duty to perform when they equalize it. Another duty of the State is, that when property is taken for a public use, against the will of the owner, he shall receive a fair price for it; and I say the State will not be doing justice if it lays down any other rule, or any rule which will preclude the owner of that property from going into Court and having the value of that property determined by a jury, as provided in the bill of rights; if not, there will be a direct contradiction of terms.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: I do not know that I shall say anything extremely useful, but it seems to me that this is a very vicious amendment. Now, sir, I do not know that the State wants to go around picking up property here and there. I do not know that there is any necessity of giving the State the right of going down into Los Angeles County, and taking their ranches. I do not know what the State could do with them. My understanding of this section originally was that the City of

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San Francisco is desirous of getting hold of the Spring Valley Water Company's property.

MR. ESTEE. That was not the origin at all. It has no relation to water companies. It is intended to give the State the same right to condemn the property of corporations that the corporations themselves have.

MR. CROSS. This section authorizes the Legislature to take this property. Now it seems to have another object; to force the companies to assess their property at a full valuation, for fear the State will seize upon it. Now, it seems to me, when we put that provision in the Constitution—with all deference to the gentlemen, we are going too far. There is such a thing as going too far. Now, suppose that a corporation owns a certain piece of land for the purpose of growing oranges on it. Suppose they do have it assessed at its full cash value, and then some time during the next year put improvements upon it that will double its value. It will be the interest of the State to seize it, because something can be made out of it. It may have a growing crop upon it. The growing crop is not assessed, and that would go for nothing.

Now, the proposition is to take the property of Spring Valley. Now it is assessed to-day, say, at eight million dollars. Suppose the Legislature does take it. It will not belong to the City of San Francisco, but to the Legislature. I do not know—I have understood that members of the Legislature don't care much about water, anyway. It would not belong to the City of San Francisco; it would be legislative property, I suppose. I don't know what they would do with it. I have heard that when a session is over members are in the habit of gathering up whatever is on their desks and packing them up for removal. I suppose each one would be entitled to a faucet and piece of pipe. For the life of me I cannot see the need of this provision, and it certainly can do no good. This would not work at all. It is in conflict with the provision already adopted in relation to the right of eminent domain, unless we propose to make a radical distinction between corporations and individuals, which I am opposed to. A mine might be assessed at ten thousand dollars to-day, and next week a mineral discovery might be made which would make it worth two hundred thousand dollars.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: This idea was taken from one of the recent Constitutions—that of Pennsylvania. We find a verbatim copy of this section in the Pennsylvania Constitution, except that part which I propose to strike out. Now, that was adopted by the Committee on Corporations, for the reason that they desired to place their right of eminent domain, in the Legislature, over and above the franchise and corporate property; and that seemed to be necessary, because it had been claimed that after the State had granted a franchise she could not condemn it for public use. Now, that was the reason. The purpose was to place this matter entirely above all cavil. There was no thought of Spring Valley, or any other valley, or of mines, or mining property. They were not referred to, and I am very much amazed at the gentleman from San Francisco, Mr. Barbour, who saw fit to make such a statement as he did. Now, if he proposed this amendment to reach that class of cases, it is a most extraordinary amendment. Now, it may be true that Spring Valley is only assessed at seven million dollars; yet, if the city desired to get hold of it, it would be an easy matter for them to assess it at a much larger amount. If that was to be the basis they would be pretty apt to put a high valuation upon it. Now, we are not legislating to meet particular cases that have existed in the past. Now, in assessing property in this State, it is not assessed at its cash value. It is assessed at its relative value. My land and your land must be assessed equally. My land must not be assessed at more than my neighbor's land of the same quality; so that an amendment of this kind would be utterly futile. My chief objection to the amendment is, however, that it is in direct conflict with that which we have adopted—section fourteen of the bill of rights, and of the section adopted in reference to the taxation of corporations. It is in direct conflict with those, and I do not think we can afford to adopt a section to-day, and to-morrow adopt another, that presents a different idea that will be in direct conflict with the other. For these reasons I propose to strike out these words, so as to leave the section as it was reported by the Committee on Corporations, and I hope the motion will prevail.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: This amendment was proposed, as I understand it, to compel large corporations and land owners to give an exact return to the Assessor of the amount of their property, so that it cannot possibly avoid the responsibility of paying its just proportion of taxes. But as the section reads, it strikes me as a little ambiguous. As far as the Spring Valley Waterworks are concerned, I don't think any one who understands the Spring Valley works would attempt to purchase them, because they are not adequate to supply San Francisco with water. It might be enough for a town like Nevada City, but for San Francisco it is too small. Now, sir, suppose the Spring Valley Waterworks assessed their property at fifteen million dollars, and suppose that they had a majority of the Legislature of this State, then I say what is to prevent the Legislature from condemning them at their own valuation. I am in favor of striking out. I don't see any use of the section. I don't see the necessity of the State owning large vineyards, and farms, and mines, and all that kind of property. I would go in for striking out the section entirely. If it is not striken out, I will vote for the amendment proposed by Mr. Estee. It will then read so that we can understand it.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I hope the Convention will pardon me for one moment. There is an effort to make a distinction between corporations and private individuals. Now as has been pointed out, in taking land for a public use, you cannot gauge its real value by the assessment roll. The conditions are not the same. I do not see any necessity for this section at all. The penalty is excessive. The gentleman from Nevada hit the key-note the moment his ox was threatened. The State does not want to go into the mining business. This property when taken, must be taken for some proper purpose. It must be taken just like any other private property. It is private property. I protest against making this distinction between private property and public property. It is simply tyranny. There is no pretense of reason, or justice, or common sense in it.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: It seems that this section is intended to express certain ideas and principles, and that principle is the right of the State to exercise the right of eminent domain in any case, with regard to incorporated companies and their franchises. Now, it is no doubt correct. But when the matter is carried further than this, as has been presented on this floor so fairly and forcibly, and it is declared that the property is to be taken according to the assessed value, then, sir, it is out of order, and never should have been recognized in this body.

THE PRESIDENT. The question is on the motion to strike out.

The ayes and noes were demanded by Messrs. Barbour, Bell, Nelson, Freud, and Farrell.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Howard, of Mariposa,	Rolfe,
Ayers,	Huestis,	Schell,
Biggs,	Hughey,	Schomp,
Blackmer,	Hunter,	Shafter,
Boucher,	Inman,	Shoemaker,
Brown,	Johnson,	Shurtleff,
Burt,	Kelley,	Smith, of Santa Clara,
Caples,	Keyes,	Smith, of 4th District,
Casserly,	Laine,	Soule,
Charles,	Lampson,	Stedman,
Cowden,	Larue,	Steele,
Cross,	Lewis.	Stevenson,
Crouch,	Mansfield,	Stuart,
Davis,	Martin, of Alameda,	Swing,
Dean,	Martin, of Santa Cruz,	Thompson,
Dowling,	McComas,	Townsend,
Dudley, of Solano,	McConnell,	Tuttle,
Dunlap,	McCoy,	Vacquerel,
Estee,	McFarland,	Van Dyke,
Estey,	McNutt,	Walker, of Tuolumne,
Evey,	Miller,	Waters,
Filcher,	Mills,	Webster,
Garvey,	Moreland,	Weller,
Glascock,	Morse,	West,
Gregg,	Nason,	Wickes,
Hager,	Ohleyer,	Wilson, of Tehama,
Hale,	Prouty,	Wilson, of 1st District,
Harvey,	Pulliam,	Winans,
Hitchcock,	Reed,	Wyatt,
Holmes,	Rhodes,	Mr. President—92.
Howard, of Los Angeles,	Ringgold,	

NOES.

Barbour,	Grace,	Neunaber,
Barton,	Harrison,	O'Sullivan,
Beerstecher,	Herrington,	Smith, of San Francisco,
Bell,	Joyce,	Sweasey,
Condon,	Kenny,	Tinnin,
Doyle,	Kleine,	Turner,
Farrell,	Lavigne,	Walker, of Marin,
Freud,	Lindow,	Wellin,
Gorman,	Nelson,	White—27.

MR. HERRINGTON. Mr. President: I wish to offer a substitute.

THE SECRETARY read:

"The property and franchises of incorporated companies shall be subject to condemnation for public uses the same as the property of individuals. Neither the power of eminent domain nor the police power of the State shall ever be exercised, or their exercise abridged or construed, so as to authorize or permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or impair the general well being of the State."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: (Stamping and confusion.) Do all the hollowing you are going to. I shall detain the Convention but a moment. (Stamping.) Mr. President, I can whip any man who does that. I do not believe any gentleman would be guilty of anything of that kind. To the gentlemen of this Convention I now address myself. There are but one or two objections to the amendment proposed by the committee, and I think they will be avoided by the amendment I propose. That is in reference to the use of the word "Legislature." It takes the property of corporations and subjects it to condemnation the same as private property of individuals.

MR. ESTEE. Mr. President: I know of no means of exercising the right of eminent domain except through the Legislature. I find that the word "Legislature" is used in all other Constitutions where like provisions are found, especially in the Constitutions of Missouri and Pennsylvania. This section has received judicial determination, and I think it is unwise to adopt a new rule when we have a well established rule for our guidance. If that is the only objection the gentleman can urge I think we had better adopt this as it is. We know it has worked well, because it has been tried in other States.

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MR. HERRINGTON. When this declares that this property shall be subject to condemnation, there can be no mistake about that, can there?

MR. ESTEE. I am not passing upon the gentleman's amendment. I do not think we know what it does mean by simply hearing it read at the desk, whereas this proposition has been carefully considered by the committee and recommended for adoption.

MR. HAGER. Mr. President: I am glad to hear my friend from San Francisco acknowledging the Constitution of Missouri as authority. I have known for a long time that he got most of his report from the Constitution of Missouri. If he had taken some other things from that Constitution it would have been better still. But in regard to the word "Legislature" he is wrong—it ought to go out.

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

Lost.

THE PRESIDENT. The question is upon the amendment of the Committee of the Whole as amended.

Adopted.

GOVERNMENT OF CORPORATIONS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section nine.

THE SECRETARY read:

"SEC. 9. No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business."

MR. BARBOUR. I offer an amendment.

THE SECRETARY read:

Strike out the word "five" in line four and insert "three."

MR. BARBOUR. It seems to me that three years is long enough for any corporation to hold land upon speculation. It seems to me we might make that difference between corporations and individuals.

The amendment was rejected—ayes, 25.

THE PRESIDENT. The question is upon concurring with the Committee of the Whole.

Carried.

MINORITY REPRESENTATION.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twelve.

THE SECRETARY read:

"SEC. 12. In all elections for Directors or Managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are Directors or Managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such Directors or Managers shall not be elected in any other manner, except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law."

MR. CROSS. Mr. President: I move to insert the word "mining" after the word "agricultural" in line nine.

THE PRESIDENT. The question is upon that amendment.

Lost—ayes, 36.

THE PRESIDENT. The question is upon the adoption of the amendment recommended by the Committee of the Whole.

Adopted.

CORPORATION BOOKS.

THE PRESIDENT: The Secretary will read the amendment of the Committee of the Whole to section fourteen.

THE SECRETARY read:

"SEC. 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection, by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers."

THE PRESIDENT. The question is upon concurring with the Committee of the whole.

Carried.

FOREIGN CORPORATIONS.

THE PRESIDENT. The Secretary will read the additional section known as section fifteen, recommended by the Committee of the Whole.

THE SECRETARY read:

"SEC. 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State. The Legislature shall enforce this section by appropriate legislation."

MR. GREGG. Mr. President: The latter part of this section, "the Legislature shall enforce this section by appropriate legislation," is unnecessary. There is a clause in section twenty-four that covers the same ground. I move to strike out that portion of the section.

MR. HOWARD, of Los Angeles. Mr. President: I wish to offer an amendment to this section.

THE PRESIDENT. Out of order; there is an amendment pending. The question is on the motion to strike out.

Carried.

MR. HOWARD, of Los Angeles. I offer an amendment.

THE SECRETARY read:

"The national and State banks shall be taxed alike."

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: As I understand it now, the national banks escape taxation altogether. It is the complaint of all the other banks in this State. I have here a letter from one of the most respectable bankers in this State, in which he says: "Permit me to make a suggestion in regard to the taxation of national banks. There are eight of those banks in this State, which do not pay any State, county, city, or town tax or license, though they represent a capital of five million dollars on the surface. It is very unjust to our State banks, and private banks. Many of our commercial banks are now considering the advantage of changing into national banks, for the purpose of avoiding taxation, and enjoying exemption from our Bank Commissioners. If they do, it will take from thirty to fifty millions of capital from State taxation, unless our laws are amended. The national bank law provides that shares in the national banks may be taxed by State authority the same as shares in the State banks. But in this State such shares are not taxed, but the bank corporation is taxed as a whole, and in this way the national banks escape. In most of the eastern States they are all taxed alike, their laws having been made to conform to it. If our Constitution says that all corporations shall be taxed as a whole, I do not see how the shares of national banks are going to be reached. But if it can be made so that the shares of State banks and other moneyed institutions can be taxed at their market value, then the national banks can be made to pay the same tax. It will be a great wrong, both to the State and to individuals, to have all this national bank capital escape taxation."

I do not see any answer that can possibly be made to the statements contained in that letter. It is clearly true that the property of the national banks ought to be taxed equally with that of the State banks.

MR. WILSON, of First District. Why would it not be better to consider it under the head of taxation?

MR. HOWARD. It is equally applicable here. It is eminently just and proper. I do not understand that the gentleman makes the point that it is not in order now. It is certainly proper here. The Act of Congress authorizes it, and it is also true that it has been approved by decisions of the Supreme Court of the United States.

MR. ROLFE. I do not know but what this is a proper amendment, but I think it is in the wrong place. Bring the matter up when we get under the head of taxation. I raise the point of order that it is not in order under this head.

MR. HOWARD. Then I will withdraw it, and give notice that I will introduce it at a future time.

THE PRESIDENT. The question is on concurring with the report of the Committee of the Whole.

Carried.

THE PRESIDENT. The Secretary will read section sixteen, as recommended by the Committee of the Whole.

THE SECRETARY read:

CORPORATIONS—HOW SUED.

"SEC. 16. A corporation or association may be sued at the county where the contract is made or is to be performed, or where the obligation or liability arises, or breach occurs; or at the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases."

Adopted.

THE PRESIDENT. The Secretary will read section seventeen.

THE SECRETARY read:

COMMON CARRIERS.

"SEC. 17. All railroad and transportation companies shall be common carriers, and subject to legislative control. Any association or corporation organized for the purpose under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination."

MR. SMITH, of Fourth District. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert the word 'canal' after the word 'railroad,' in the first line."

MR. SMITH. Mr. President: I will state that this word "canal" was in the original report of the committee, and Mr. Estee moved to strike it out, as there were, he said, no canals in this State. There is now being constructed a navigable canal in Kern County, connecting with the San Joaquin River. There is no reason why the word should not be there as well as the word "railroad."

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

Division was called for, and the amendment adopted, by a vote of 62 ayes to 30 noes.

MR. BARBOUR. Mr. President: I offer an amendment to the section.

THE SECRETARY read:

"Amend section seventeen, after the word 'control,' in line two, by adding the following: 'Railways and navigable canals heretofore constructed, or which may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of persons and property thereon, under such regulations as may be prescribed by law.'"

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REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: This is the amendment which I offered in Committee of the Whole. It appears to me that the gentlemen who objected to it misunderstood the question. I hold that this is one of the most necessary declarations to enter into the Constitution. When we have declared that they are common carriers and subject to legislative control, we have not more than half done the work. But the declaration that they are public highways, asserts a principle which is the very basis of the power of the State to regulate and control corporations. Now, sir, I have examined the subject more closely since that time, and I find that the assertion that the authorities do not support the decision that railroads are public highways, was erroneous. Every writer, and every decision entitled to a grain of respect, holds that they are public highways, and treats them as such, and the authority of this State to deal with, regulate, and control them comes from the fact that they are public highways. Now, sir, the narrow, technical objection was made here to this declaration, because it was assumed by some gentlemen that it was a necessary implication, that John Doe and Richard Roe would be entitled to take their cars upon the track of the railroad, and run them where, when, and how they pleased. Sir, there is no such implication. It is to be done, if ever done at all, in accordance with regulations prescribed by law. But it may be necessary to bring competition to bear, and the State should assert the right which she possesses to establish such competition wherever it is absolutely necessary. I insist that this is a proper declaration to go into the Constitution. They are public highways. They are the king's highways in a certain sense. They are highways for the use of the people, subject to the control of the people; not to be used, of course, without compensation. As a matter of course, tolls must be paid. I hope this declaration will be inserted in the Constitution.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. President: This is a matter, sir, that was argued in Committee of the Whole, and of course, I suppose every gentleman understands the matter thoroughly. It was certainly clearly maintained that the whole control we have over these corporations is by reason of their being engaged in a public employment, and not, in any manner, because they are public highways. This would involve the question of the right of police control, and I hope we will put no such useless declaration in the Constitution.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. President: I presume, sir, that the gentleman will admit that railroads are private property. Very well. If they be private property, and the State desires to appropriate them, how shall it proceed? There is the Code. We have just been discussing the power of the State to exercise what is called the right of eminent domain; that is the only road by which we can reach that kind of property. If the State desires to condemn it she has the power to do so, but what kind of a declaration would this be, that they are public highways, and that other men could come and put cars upon them and run them? What kind of condemnation would this be? What species, what style, what form of condemnation would this be? How does he propose to take them? He says, under certain regulations of law. Now, would such regulations of law amount to a legal condemnation under the State's right of eminent domain? I deny it; it would be no condemnation that would be recognized as such. If we desire to make these railroads in fact public highways, there is but one way to do it, that is to condemn them and pay for them, under the law of eminent domain. Again, sir, what would be the practical result? Would it be possible to run the railroad? Would it be possible for any company to operate a railroad where this man and that man, this company and that company had cars upon the road? No, sir; it would be simply an impossibility. The whole scheme is utterly impracticable and absurd; it is an attempt to take private property without due process of law, and that is what it is not competent for this Convention to do, because we are limited to the power of eminent domain. There is a restriction imposed by the Federal Constitution, that provides that no man shall be deprived of life, liberty, or property without due process of law, yet the gentleman from San Francisco proposes to ignore that due process of law; he proposes to condemn private property by some species of legislative control. It would be a special provision, and therefore would not be in accordance with the law of the land. It would be a violation of the provisions of the Federal Constitution, which places a limit upon the exercise of that right. It would be a special provision, and therefore would not be in compliance with the law of the land. It would be in direct conflict with the Federal Constitution.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: In coming here to regulate the affairs of railroads we ought to be guided somewhat by experience. We ought to be guided by the experience of other States which have had this matter on hand a great deal longer than California has. In looking over the Constitutions of other States, where they have been adopted within the last few years, I find without exception that they have a declaration that railroads are public highways. In looking over the debates of these Conventions I did not find any such objections as have been urged here. And when I go to the law books I find that they are called public highways, and are treated as such by the law. And are they not public highways, as much as a public road? A turnpike is a public highway. It is under the control, to a limited extent, of the owners of the road. It is under the control of the laws of the State, and so is the railroad. What other States have done in this matter we can do. We should follow their experience to some extent, because we have not had the experience that they have had.

THE PRESIDENT. The question is on the amendment of the gentleman from San Francisco, Mr. Barbour.

The ayes and noes were demanded by Messrs. Barbour, Gorman, Joyce, White, and Condon.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Harrison,	O'Sullivan,
Barbour,	Herrington,	Reynolds,
Barry,	Howard, of Los Angeles,	Ringgold,
Barton,	Hunter,	Shoemaker,
Beerstecher,	Joyce,	Smith, of 4th District,
Bell,	Kenny,	Smith, of San Francisco,
Condon,	Keyes,	Stedman,
Cross,	Kleine,	Sweasey,
Dowling,	Laine,	Swenson,
Doyle,	Larkin,	Tuttle,
Farrell,	Lavigne,	Vacquerel,
Filcher,	Lindow,	Walker, of Marin,
Freud,	McCoy,	Waters,
Garvey,	Moffat,	Wellin,
Gorman,	Morse,	White,
Grace,	Nelson,	Wilson, of Tehama,
Hager,	Neunaber,	Wyatt—51.

NOES.

Andrews,	Huestis,	Schell,
Biggs,	Inman,	Schomp,
Blackmer,	Johnson,	Shafter,
Boucher,	Jones,	Shurtleff,
Brown,	Kelley,	Smith, of Santa Clara,
Burt,	Larue,	Soule,
Caples,	Lewis,	Steele,
Casserly,	Mansfield,	Stevenson,
Cowden,	Martin, of Alameda,	Stuart,
Crouch,	Martin, of Santa Cruz,	Swing,
Davis,	McCallum,	Thompson,
Dean,	McComas,	Tinnin,
Dudley, of Solano,	McConnell,	Townsend,
Dunlap,	McFarland,	Turner,
Estee,	McNutt,	Van Dyke,
Estey,	Miller,	Van Voorhies,
Evey,	Mills,	Walker, of Tuolumne,
Freeman,	Moreland,	Webster,
Glascock,	Nason,	Weller,
Gregg,	Ohleyer,	West,
Hale,	Prouty,	Wickes,
Harvey,	Pulliam,	Wilson, of 1st District,
Heiskell,	Reed,	Winans,
Hitchcock,	Rhodes,	Mr. President—73.
Holmes,		

MR. WEBSTER. Mr. President: I offer an amendment to correct the phraseology.

THE SECRETARY read:

"Insert between the words 'and' and 'transportation,' in the first line, the word 'other.'"

THE PRESIDENT. The question is upon the adoption of the amendment.

Adopted.

THE PRESIDENT. The question is upon the amendment of the Committee of the Whole as amended.

Adopted.

POOLING RATES.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty.

THE SECRETARY read:

"SEC. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority, in which shall be vested the power to regulate fares and freights, authorizing such change."

MR. GLASCOCK. Mr. President: I offer the following amendment.

THE SECRETARY read:

"Strike out all after the word 'standard,' in eighth line, and insert, 'without the consent of the Legislature, by at least a two-thirds vote of all the members elected to each house.'"

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: The amendment commends itself to my judgment. I believe it will strengthen the principle which is conveyed in this section. It will protect the people from these short competitions, gotten up for the purpose of competing rival lines out of existence. It seems to me that it would be well to adopt this provision, for the reason that at some future time there might be elected a Board of Commissioners, and they would have authority as required in the article. There might be a Railroad Commission who might be captured by the railroad companies, and in that case benefits would be secured to the people by this section that otherwise would be lost. I think that this power may be safely reposed in two thirds of the members elected to

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the Legislature. If it should become a public necessity, no Legislature will refuse to concede it. I think the amendment will strengthen the section, and it shall receive my favor.

MR. WHITE. Mr. President: I wish to say that I hope this will not be altered from the original report of the Committee of the Whole, for the reason, that the Commissioners which we have established will be the best judges of when they ought to be raised and lowered. They will have all the facts before them, and it will be easy for them to do it if it is necessary. They will be upon the spot. The Legislature is not in session for two years at a time, and it appears to me, that if we are going to trust this Commission—and I find no hesitation in doing so—we should allow them to use their judgment in this matter. They are the proper judges, and they can exercise their power without waiting for the Legislature, and the public interests may demand that they shall do so without any delay.

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

The ayes and noes were demanded by Messrs. Glascock, Kelley, Moreland, Biggs, and Hunter.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Hager,	Martin, of Santa Cruz,
Ayers,	Hitchcock,	Moreland,
Biggs,	Hunter,	Prouty,
Casserly,	Johnson,	Schomp,
Chapman,	Kelley,	Shoemaker,
Cowden,	Laine,	Stevenson,
Dean,	Lewis,	Tinnin,
Garvey,	Mansfield,	Walker—25.
Glascock,		

NOES.

Barbour,	Howard, of Los Angeles,	Schell,
Barry,	Huestis,	Shafter,
Barton,	Hughey,	Shurtleff,
Beerstecher,	Inman,	Smith, of Santa Clara,
Bell,	Jones,	Smith, of 4th District,
Blackmer,	Joyce,	Smith, of San Francisco,
Boucher,	Kenny,	Soule,
Brown,	Keyes,	Stedman,
Burt,	Kleine,	Steele,
Caples,	Lampson,	Stuart,
Condon,	Larue,	Sweasey,
Cross,	Lavigne,	Swenson,
Crouch,	Lindow,	Swing,
Davis,	Martin, of Alameda,	Thompson,
Dowling,	McCallum,	Townsend,
Doyle,	McComas,	Turner,
Dudley, of Solano,	McConnell,	Tuttle,
Dunlap,	McCoy,	Vacquerel,
Estee,	McFarland,	Van Dyke,
Estey,	McNutt,	Van Voorhies,
Evey,	Miller,	Walker, of Marin,
Farrell,	Mills,	Waters,
Filcher,	Moffat,	Webster,
Freeman,	Nason,	Weller,
Freud,	Nelson,	Wellin,
Gorman,	Neunaber,	West,
Grace,	Ohleyer,	Wickes,
Gregg,	O'Sullivan,	White,
Hale,	Pulliam,	Wilson, of Tehama,
Harrison,	Reed,	Wilson, of 1st District,
Harvey,	Reynolds,	Winans,
Heiskell,	Rhodes,	Wyatt,
Herrington,	Ringgold,	Mr. President—100.
Holmes,		

MR. GLASCOCK. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'standard,' in line eight."

The ayes and noes were demanded by Messrs. Glascock, Condon, Grace, Nelson, and Farrell.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Glascock,	Moreland,
Ayers,	Grace,	Tinnin,
Biggs,	Kelley,	Winans—11.
Cowden,	Lewis,	

NOES.

Barbour,	Dean,	Hale,
Barry,	Dowling,	Harrison,
Barton,	Doyle,	Harvey,
Beerstecher,	Dudley, of Solano,	Heiskell,
Bell,	Dunlap,	Herrington,
Blackmer,	Estee,	Hilborn,
Boucher,	Estey,	Hitchcock,
Brown,	Evey,	Holmes,
Burt,	Farrell,	Howard, of Los Angeles,
Caples,	Filcher,	Huestis,
Casserly,	Freeman,	Hughey,
Charles,	Freud,	Hunter,
Condon,	Garvey,	Inman,
Cross,	Gorman,	Johnson,
Crouch,	Gregg,	Jones,
Davis,	Hager,	Joyce,
Kenny,	Neunaber,	Swenson,
Keyes,	Ohleyer,	Swing,
Kleine,	O'Sullivan,	Thompson,
Laine,	Prouty,	Townsend,
Lampson,	Pulliam,	Turner,
Larkin,	Reed,	Tuttle,
Larue,	Reynolds,	Vacquerel,
Lavigne,	Rhodes,	Van Dyke,
Lindow,	Ringgold,	Van Voorhies,
Mansfield,	Schell,	Walker, of Marin,
Martin, of Alameda,	Schomp,	Walker, of Tuolumne,
Martin, of Santa Cruz,	Shafter,	Waters,
McComas,	Shoemaker,	Webster,
McConnell,	Shurtleff,	Weller,
McCoy,	Smith, of Santa Clara,	Wellin,
McFarland,	Smith, of 4th District,	West,
McNutt,	Smith, of San Francisco.	Wickes,
Miller,	Soule,	White,
Mills,	Stedman,	Wilson, of Tehama,
Moffat,	Steele,	Wilson, of 1st District,
Morse,	Stevenson,	Wyatt,
Nason,	Stuart,	Mr. President—116.
Nelson,	Sweasey,	

MR. REED. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section twenty by striking out the words, 'that leaves port or makes,' in second line, and insert 'leaving or entering any port.' Also, strike out the words, 'doing the carrying are to be shared by the other not doing the carrying,' in the fourth and fifth lines, and insert, 'performing shall be shared by the other not performing the service.'"

MR. WINANS. Mr. President: This amendment is entirely verbal in its character. It seems to me the language, as it now stands—"leaves port or makes port"—is too commonplace and technical for a document such as this, where so much precision and nicety is required. The language suggested in the amendment is a great improvement in the phraseology. And again—"whereby the earnings of the one doing the carrying are to be shared by the other not doing the carrying." That language, too, is lame. The amendment improves that, also, and I think it would be well to make the change suggested.

MR. ESTEE. The language is commonplace, and that is the reason it is right to the point. It is better than the amendment.

THE PRESIDENT. The question is upon the amendment.

Rejected.

THE PRESIDENT. The question is on concurring with the amendment of the Committee of the Whole.

Carried.

DISCRIMINATIONS.

THE PRESIDENT. The Secretary will read section twenty-one, as as amended by the Committee of the Whole.

THE SECRETARY read:

"SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

THE PRESIDENT. The question is on concurring with the Committee of the Whole.

Carried.

THE PRESIDENT. The Secretary will read section twenty-two, as reported by the Committee of the Whole.

THE SECRETARY read:

"SEC. 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors of their respective districts, at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or

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company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever from any cause a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified."

MR. WILSON, of First District. Mr. President: I offer an amendment to the section.

THE SECRETARY read:

"Insert in line eight, after the word 'employé,' as follows: 'and no member of the Constitutional Convention which adopted this Constitution shall be eligible to the office of Railroad Commissioner at the first election therefor under this Constitution.'"

MR. WILSON, of First District. Mr. President: As soon as this Constitution goes before the people, it may be proclaimed that these offices were gotten up for the members of this Convention themselves, when everybody knows that there is no man in this Convention who is a candidate for any office. [Great laughter.] It is important that this provision be inserted, because it will silence one of the arguments which may be made upon the stump against this Constitution. For that reason I have offered this amendment in all seriousness.

MR. McFARLAND. I desire to offer an amendment.

THE PRESIDENT. It is out of order.

MR. HILBORN. I hope that amendment will be adopted. It is in accordance with the spirit of the present Constitution, which prohibits members of the Legislature from filling offices which they themselves have created, or helped to create.

MR. HOWARD, of Los Angeles. I hope that amendment will be adopted, because the railroad newspapers and others have repeatedly made this charge, and I hope we will refute it by adopting this amendment.

MR. JONES. I raise the point of order, that the amendment is not germane to the subject under consideration.

THE PRESIDENT. The point of order is not well taken.

MR. HAGER. Mr. President: I hope this amendment will prevail. It is the same as the present Constitution in reference to members of the Legislature. It will be found in section twenty. It says: "That no member of the Senate or Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit," etc. There is the same principle, that these offices shall not be created by the Legislature for the members to fill. This Convention is here in the character of a Legislature. We are creating offices, and it is no more than right to say to the people, that we will not allow the members of the Convention to become candidates for these various places. I would be willing to go further, and declare that no member of this Convention shall be eligible to any office at the first election under this Constitution. If that amendment is offered in the proper place I will vote for it.

MR. BIGGS. If the gentleman will go further and accept such amendment——

MR. WILSON. I will accept it so far as the gentleman from Butte himself is concerned. [Loud and continued laughter.]

MR. PROUTY. Mr. President: I now move the previous question.

Seconded by Messrs. Gregg, Gorman, Stedman, and Davis.

THE PRESIDENT. The question is: Shall the main question be now put?

Lost.

MR. McFARLAND. Mr. President: I am opposed to the amendment upon principle, sir. But if those gentlemen are so ingenious as to call the ayes and noes I shall vote for it, because I do not like to go upon the record on the other side. [Laughter.] Now, I would like to have an opportunity, as a citizen of this State, to be a candidate for that or any other good office if I can serve the people, and, therefore, I am opposed to the amendment—[laughter]—if it can be voted upon without calling the ayes and noes. [Laughter.]

MR. WEST. Mr. President: I shall vote against this proposition, believing that it was offered as a burlesque, and I think it will be so understood by the people. I think the motion is out of place and in bad taste, and an infringement of the rights of the people.

MR. HILBORN. Was it in bad taste for the framers of the old Constitution to prohibit the members of the Legislature from holding offices which they had created?

MR. WEST. The gentleman well understands that the duties of Legislators are very different from these; we are simply formulating an instrument to submit to the people for their ratification. It is their own business who shall fill the offices afterwards.

MR. WATERS. Now, sir, as there seems to be a misunderstanding as to what the present constitutional provision is, as it comes from men who know better, I will take it upon myself to set them right. I think Judge Hager and Mr. Hilborn both know that that provision does not apply to elective officers. It expressly excepts elective officers. Members of the Legislature always have run for offices created by themselves. The limit is upon appointed officers. I agree with the gentleman from Los Angeles, that this is a matter of buncombe, and we ought not to be carried away with it.

MR. ESTEE. I move we adjourn, as this is a very serious matter.

MR. HUESTIS. I am very loth to believe that the gentleman from San Francisco, Mr. Wilson, would undertake to burlesque this Convention. I think the proposition is one eminently proper to be adopted, and therefore I am in favor of it.

MR. WINANS. There will be another good accomplished, it will show the people of this State that we who urge the adoption of this Constitution are doing so upon its merits, and not from any selfish ends.

ADJOURNMENT.

MR. ESTEE. Mr. President: I am opposed to this amendment. It is now nearly five o'clock, and I think we had better put off further discussion until to-morrow morning. I move we do now adjourn.

Carried.

And at four o'clock and fifty-five minutes P. M. the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND TWENTY-SIXTH DAY.

SACRAMENTO, Friday, January 31st, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President pro tem. Belcher in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Edgerton,	Murphy,
Berry,	Fawcett,	Noel,
Boggs,	Finney,	O'Donnell,
Casserly,	Freeman,	Overton,
Cowden,	Graves,	Porter,
Dudley, of San Joaquin,	Hall,	Stedman,
Dudley, of Solano,	Herold,	Terry.
Eagon,	McCallum,	

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

PETITIONS.

Messrs. Johnson, Shurtleff, Mills, Martin of Alameda, Moreland, and Shafter, presented petitions requesting the exemption of certain property used for charitable, educational, and church purposes, from taxation.

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Laid on the table, to be considered with the article on revenue and taxation.

RESOLUTION.

MR. HUESTIS. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the President of this Convention be requested to appoint, at an early day, a committee, to consist of one from each judicial district, whose duty it shall be to prepare an address to the people of this State, setting forth concisely the principal amendments proposed by this Convention to the present Constitution, and, as far as practicable, the reasons therefor; said address to be submitted to the Convention for action thereon before its promulgation.

THE PRESIDENT pro tem. Such a resolution has already been tabled.

MR. HUESTIS. That was——

MR. LARKIN. Mr. President: I move to lay the resolution on the table.

MR. HUESTIS. I claim the floor.

MR. TINNIN. I rise to a point of order. A motion to lay on the table is not debatable.

THE PRESIDENT pro tem. There is a resolution offered, and there is a motion that it be laid on the table. That motion is not debatable.

MR. HUESTIS. I suppose that it is the parliamentary practice that the mover of a resolution has the floor, at least until he can explain the object of the resolution.

THE PRESIDENT pro tem. The motion is to lay on the table.

MR. CROSS. I raise the point of order that the motion to lay on the table was made before the resolution was seconded.

THE PRESIDENT pro tem. The Chair is unable to tell about that. The question is on the motion to lay on the table.

The motion prevailed, on a division, by a vote of 60 ayes to 32 noes.

President Hoge in the chair.

AMENDMENTS TO RULES.

MR. GORMAN, in accordance with notice, offered the following amendment to Rule Thirty-five:

"After Rule Thirty-five add the following: 'Provided, that when the previous question is adopted, it shall only apply to the section or amendments to the section then pending, and not to the whole article.'"

MR. GORMAN. Mr. President: This amendment is about the same as that adopted for the Committee of the Whole, and I believe that is what is needed by the Convention. Now, in the Committee of the Whole every question has been debated fully, and it is very lately that the previous question has cut off debate before every one has been satisfied, and I believe that every gentleman on this floor will be allowed to speak as much as is needed by the Convention. We have debated every question fully, and a great deal of the debate on the last article, and on every article, so far, has been almost the same thing over again. There has been very few new ideas. I believe that this previous question is needed, and that we need the power to move the previous question on the sections, and not on the whole article. I believe that if we keep on in this way that the Convention will order the previous question on the whole article. I noticed yesterday that when gentlemen spoke longer than some of the members thought was needed, they commenced stamping upon the floor, and the result of that will be worse than the previous question applied to the section and the amendments to it pending.

MR. ESTEE. Mr. President: There is one objection to the amendment proposed by the gentleman from San Francisco, and that objection rises now for the first time, that is, on the second reading and engrossment of these articles. If this amendment is adopted after we get through with all the amendments reported by the Committee of the Whole, and take up the article, then it will be impossible to check amendments and debate. It will be a very great injury, and will interfere with the expedition of business, so far as I am able to observe. My idea is that the true way is to go on just the way we are. If this House is in favor of moving the previous question, as the rule now stands, it goes to the whole article; but if this amendment is adopted, there can be no such thing as moving the previous question on the whole article after we shall have gone through with it in the Convention. I hope, therefore, for this and other reasons, that we will not change this rule.

MR. BLACKMER. Mr. President: There is another reason why this amendment should not be adopted. The effect will be that a section may be brought before the Convention and two amendments may be offered, or if it is an amendment proposed by the Committee of the Whole one amendment may be offered. Neither of them may be such as the Convention would like to adopt, and yet they desire to perfect the section as presented by the Committee of the Whole. If the previous question is moved we are brought to a vote upon the amendment, or the amendment to the amendment, and that is the end of it. We can do nothing further with the section. We must then come to a vote upon either the objectionable amendment or upon a section that is objectionable. For that reason I hope the amendment will not prevail.

MR. HAGER. Mr. President: Yesterday I gave notice that I would move to amend the rule, so as to allow any amendment, by itself, to be laid on the table. That is the rule that prevails in the House of Representatives, in Washington. For instance, now, in considering this proposition any member moves an amendment that we do not consider worthy of consideration, we can move to lay that amendment on the table, which stops debate, and leaves the other amendment to the proposition before the Convention. I think if we had that rule established here it would be very beneficial, and expedite business. I think it would be a better proposition than this, which is an amendment in regard to the previous question.

MR. HOWARD, of Los Angeles. Mr. President: I think we are going rather fast with this matter, and I move to lay the amendment on the table.

The motion prevailed.

MR. HAGER. Mr. President: In accordance with previous notice, I send up an amendment to Rule Fifty-five.

THE SECRETARY read:

"Amend Rule Fifty-five, by adding at the end thereof the following: 'And any amendment proposed in Convention to a proposition reported by the Committee of the Whole, may, by itself, and without carrying with it the proposition, be laid on the table.'"

MR. ESTEE. It will take just as long to dispose of it as it would to lay it on the table.

MR. HAGER. When a motion to lay on the table is made, that stops all debate. That is a summary way of getting rid of an undesired amendment.

MR. AYERS. Mr. President: I call the attention of gentlemen to Rule Sixty, which excepts Rules Fifty, Fifty-one, Fifty-two, Fifty-three, and Fifty-five from the possibility of being temporarily suspended.

MR. BLACKMER. Mr. President: It seems to me that the amendment proposed by the gentleman from San Francisco simply includes amendments that may be offered by the Committee of the Whole. It should apply to all amendments, if any. It seems to me that it is absurd to include one and not the other. I think it is an unwise provision, any way. The effect will be that we shall find this Convention at times in a temper that it will not entertain any amendment, whatever it may be.

MR. HAGER. It applies to all propositions raised on the report.

MR. ESTEE. That is the reason it should not be adopted.

The amendment was rejected.

ASSISTANT JOURNAL CLERK.

The President, in accordance with resolution adopted on January twenty-seventh, appointed Charles N. Post as Assistant Journal Clerk.

CORPORATIONS.

THE PRESIDENT. The Convention will resume the consideration of the report of the Committee of the Whole on the article on corporations other than municipal. The question is on the amendment to section twenty-two, offered by the gentleman from San Francisco, Mr. Wilson.

MR. LARKIN. Mr. President: I would ask that the amendment be read.

THE SECRETARY read:

"Insert in line eight, after the word 'employé,' as follows: 'And no member of the Constitutional Convention which adopted this Constitution shall be eligible to the office of Railroad Commissioner at the first election therefor under this Constitution.'"

MR. LARKIN. Mr. President: I am satisfied that the proposition in the main is correct. I think we should go further, probably, and prohibit members in this Convention from holding any office, either legislative, executive, or judicial. I think probably we might go still further, and prohibit attorneys that may be attorneys for corporations from holding any position in the State. Therefore, I offer as a substitute for Mr. Wilson's amendment the following:

"No member of this Convention, who is an attorney for any corporation, shall ever be eligible for any office within the gift of the people of this State."

THE PRESIDENT. The amendment is not in order.

REMARKS OF MR. HEISKELL.

MR. HEISKELL. Mr. President: I shall not vote for Mr. Wilson's amendment. There are many gentlemen in this Convention that I would like to see returned to the Legislature, or elected to any of the offices provided for in this Constitution, if it should be ratified. They are able, and I believe they are honest. I will not, then, exclude any one from holding any elective office who has had a hand in making it. They have stood here in defense of the producers of this State, and the producers of this State will remember them for it. Mr. President, there are gentlemen upon this floor that would not have been here but through the connubiating at the Palace Hotel, and they know that they cannot come back.

MR. PULLIAM. I would ask what the gentleman means?

MR. HEISKELL. I mean the connubiating between the leading Democrats and the leading railroad men.

MR. PULLIAM. I was there, and if the gentleman means to insinuate that I come here——

MR. HEISKELL. Not at all. Such men as you were put on to carry the thing through, not that they thought that you would be with them. Such men as you gave it weight. They put you on to pull the thing through. Now, I shall not vote for any such thing.

MR. TINNIN. Mr. President: I have an amendment here that I desire to send up and have read. I think the gentleman from San Francisco will accept it.

THE SECRETARY read:

"Add to the Wilson amendment, 'or practice law in any Court, or act as Judge in the same.'"

MR. TINNIN. I think my friend from San Francisco is laboring zealously in behalf of the people, and in order to add to the merits of his amendment I am confident that he will accept that amendment.

MR. WILSON. I will accept it with this addition: "or own any of the land that is to be taxed."

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I am very glad that I did not obtain the floor last evening and commit myself to the amendment of Mr. Wilson. In the heat and flurry and excitement of the moment I think I should have done so; but having seriously contemplated the thing last night; having looked over it in all its various points and ramifications, I am satisfied that this amendment is vicious, and that it will subserve no good purpose if placed in this Constitution. Now, sir, what is the logical result of this amendment? If we adopt an amendment that no gentleman on this floor shall be voted for as Railroad Commissioner, we

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must, if consistent, and as a logical sequence also, exclude every gentleman on this floor from the judicial offices which this Constitution shall create. And further, sir, every gentleman on this floor will be incompetent to be a member of a State Board of Equalization. Whatever other office this Convention may vote the members of this Convention ineligible to fill, I say, sir, that this is a limitation to the rights of the people to vote for the persons whom they see fit to fill the offices of the State.

MR. WILSON. Are they not already limited by this section twenty-two? We exclude certain persons from being Railroad Commissioners.

MR. AYERS. Yes, sir; they are limited. We limit them to the proper persons.

MR. WILSON. This only adds one other class.

MR. TOWNSEND. Did you not vote to limit them to electing the Governor to the United States Senate?

MR. AYERS. I did, sir.

MR. HILBORN. Didn't you vote to prevent them electing any Judge to sit in any Constitutional Convention?

MR. AYERS. I don't think I did. If I gave it a thought I did not. I believe that the people have a right, in reorganizing the organic law, to send whoever they please. Now, sir, I say that this is in the nature of a limitation of the franchise of the people, and I do not stand here for any such purpose. The gentleman from Stanislaus has well remarked, that there are gentlemen on this floor who are eminently capable to fill honestly, ably, and conscientiously any office in the gift of this people. Why should they be secluded if the people want them? What have they done on this floor that should ostracise them from the right that every American citizen has? Where is our fault? Where is our error? Perhaps we have struck deep into some places, and there is where our fault lies. [Applause.] Now, sir, it has not been charged on this floor, as I know of, that I seek any office, but if I did, if I wished any office, it is my right to seek it, and it is the right of the people to elect me or reject me. Who stands here to limit my right? But I seek no office. "Let the galled jade wince, my withers are unwrung." "Shake not thy gory locks at me, thou canst not say I did it."

MR. WILSON. I would ask the gentleman if he is in favor of the section adopted in the Committee of the Whole to the article on judicial department, making membership in the bar a qualification for the Judges?

MR. AYERS. I am, sir.

MR. WILSON. Then you cannot be a Judge.

MR. AYERS. The gentleman has already said I am not competent to judge of judicial questions.

MR. WILSON. Are you in favor of that clause?

MR. AYERS. I know what right is, and in the olden time right was law.

MR. WILSON. Are you in favor of requiring that test?

MR. AYERS. I am.

MR. WILSON. Then you cannot be a Judge.

MR. AYERS. How do you know that I am not a lawyer?

MR. WILSON. Your argument is enough.

MR. AYERS. It requires no deep technical knowledge to fill this position, but I think a technical knowledge necessary to dispense justice under law. I say, Mr. President, that this is a fair representative body of the intelligence, of the ability, of the industries, and of the wealth of this State. I say that we have no right to say to the people of this State: You can vote for any man in this state, for any office created by this Constitution, except the one hundred and fifty-two gentlemen whom they have seen fit to clothe with the great and important duty of framing for them an organic law, which may last for ages. We have no right to do it, and I shall vote against the amendment offered by the gentleman.

MR. HAGER. It is only the first election.

MR. AYERS. The first election is a very material one.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I know there is rather high authority before this house for this amendment of Mr. Wilson, of San Francisco, and for the others that have been presented. Now, sir, I am opposed to all of them, and as the order of the day is free investigation, and as in a Constitutional Convention above all places, there should be freedom of research and freedom of thought, where minds should be allowed to strike against mind, and intellect vie with intellect, and in that way arrive at matters of fact, I contend that is just and proper that each measure, or any amendment, let it come from whatever source it may, should be thoroughly and fairly criticised before this body. Now, sir, may it not be considered at once by the press of this State, and the enemies of the work of this body, that the members, if they pass such an amendment as this, have lost entire confidence in themselves; that they have gone so far, that they have said that there is not the first man in their body who will do to trust as Railroad Commissioner; that you must go outside of them; that there is corruption there; and that it will not do to trust any of them; or that there is such a degree of jealousy on the part of some that others may reach this high and responsible position that, like the canine animal in the manger, they conclude that as they cannot reach it themselves the others shall not. There is no large question that I can see, and no great principle to reach in this measure. I am convinced that it is sinister in its tendency, whether so in its inception or not. All should look upon it in that light. I am convinced that the amendments were introduced to some extent to expose the matter. Let us study upon the matter for a moment. Suppose there be men in this body that have faithfully and ably performed their parts, who have shown themselves worthy of the confidence reposed in them. I am not one of those who conclude that there are no competent men in this body. I am convinced that the people of this State sent the men that they thought most competent, most reliable, and most able to make the great fundamental law of this State, that is the class of men, and it would be wrong in me or any other gentleman to say that this grand and august body of men are afflicted with incompetency or imbecility. But here is the point in connection with this subject. Say, for instance, that these men perform their part well, it would be a contradiction of holy writ to say that the people who indorse this Constitution should not be allowed to say to them: "Well done, good and faithful servant; you have been faithful over one thing, I will make you ruler over others." It will controvert this principle. This is a matter that we should look at in all seriousness, Mr. President.

MR. HOWARD. Mr. President: I call for the ayes and noes.

Seconded by Messrs. Ayers, Huestis, West, and Pulliam.

MR. RINGGOLD. Mr. President. As abnegation is a virtue that every man ought to feel proud of, and as the humblest representative of the reform party in this body, I regret that the gentleman from San Francisco has taken the wind out of our sails, by proposing the fundamental principles of the new party. I hope that the ayes and noes will be called, and I am satisfied that every member of the San Francisco delegation will vote in accordance with that proposition, which is the first principle of the Workingmen's party. [Applause.]

MR. O'SULLIVAN. Mr. President: As one of the San Francisco delegation I shall certainly vote no. I believe that there is a larger proportion of honest men in this Convention than has ever been seen in any public body in this State since the first Constitutional Convention. I shall vote against this amendment. The people have a right to choose whom they please. This amendment is a small torch, unworthy of consideration. It comes with a bad grace from a gentleman who represents one quarter of the people of his district.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President. I was brought up in the good old orthodox school, and was taught to believe that there would be punishment after death. The proposition of the gentleman from San Francisco, I presume, is punishment after death. It is not enough to be a member of the Convention. That is not enough. It is said that every member of the Convention has killed himself, and now he proposes a punishment after death. I presume that those who believe in that, and hold to the good old doctrine should vote for the amendment. In my opinion the gentleman should have started in earlier, along with the balance of us—when we proposed that a man who was a District Judge and employed by the State to perform his judicial functions, should not come up here and draw another salary. In addition to the fact that he was drawing a double salary from the treasury, he was called upon to pass upon the very identical measure which might affect his own judicial position. Gentlemen then could not see it. Their sensitiveness, and their honor could not possibly see that there was any impropriety in a Judge sitting here, acting, and voting upon measures affecting the judiciary, his own salary and everything else. Their honor could not see that that was improper. Let us go the whole hog. There are thirty or forty candidates for Governor in this Convention. The gentleman has proposed now to render ineligible to the office of Railroad Commissioner every member of this Convention, and leave them eligible to the office of Governor; who may have the appointment of all three of them. They might die, or if the Legislature removes them as provided in here, the Governor fills the place, and yet you want to make them eligible for Governor. I want to shut the wind off from all the candidates for Governor. And let us go on further. This section is declared to be unconstitutional, and the universal declaration has been all the time that it would not hold water. Now, there are sixty or seventy lawyers of us in this Convention. It may be said by these sensitive people that these lawyers are fixing that up in order to make business for themselves. Hereafter they will come into Court with demurrers, points, impeachments, injunctions, and the Lord knows what all, on account of this provision. Now, let us put in that no lawyer, a member of this Convention, shall be eligible to raise a question in a Court of law, or take a retainer from any corporation to test the validity, or constitutionality of any section of this Constitution. [Applause.] Why not? You can say to the world, gentlemen, we have no axes to grind. We are too sensitive to put into the Constitution business for lawyers. I may have some of the chicken pie—some of the turkey. Who knows? Or, let us draw up an agreement, "whereas, this Constitution is full of unconstitutionalities; therefore, we the undersigned, lawyers, members of the Constitutional Convention of the State of California, do hereby positively agree and bind ourselves to one another as men of honor that we will not accept retaining fees from corporations to test the validity of this Constitution." Let us be consistent. Let us go the whole hog. Now, if we are not office seekers, if we are not grinding our own axes, let us come right up and say so and put ourselves upon the record. There are other offices besides that of Railroad Commissioner. There are Congressman and Senators, and hundreds of others. Most of us say that we are not trying to make capital for these positions. Let us draw up the paper and put it forth to the world. Let us be fair. Some men know they cannot get these offices, and they do not want any one else to get them. Whatever is put in there should be general, broad, and sweeping, and applied to everybody.

MR. McFARLAND. Mr. President: It is very apparent that there has not been time to concur upon this proposition. I therefore move that this Convention do now adjourn.

MR. ESTEE. Mr. President: I hope this amendment will not be adopted. I think the adoption of this amendment will be the assertion, on the part of the members of this Convention, that they have had to put something in that section to convince the people of this State that they are perfectly unselfish. It looks to me utterly ridiculous for this Convention to attempt to convince the people by a constitutional amendment that they are acting honestly.

MR. WILSON. Have you any serious idea that this Convention would adopt this amendment?

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MR. ESTEE. I do not know. Here are a dozen most respectable gentlemen favoring it.

MR. WILSON. You expressed that opinion yesterday.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I think, sir, it is not strange that certain of the newspaper editorials and correspondence of this State have treated this Convention with contempt, when, sir, the Chairman of the most important and honorable committee in this Convention attempts to fling contempt upon the action of the Convention. To me it looks like this: that gentlemen in this Convention, having been disappointed in the adoption of some provision which they opposed, now seek to throw contempt upon that provision by trying to make it appear that members have been acting from personal motives. Now, sir, it seems to me that if this is not, it ought to be a dignified body, and every member of the Convention should treat the Convention of which he is an honored member as a respectable body, and that the members of this Convention who have studied and worked for the adoption of so important a measure as this, and one which has met with such serious opposition, should not have thrown upon them any contempt by proposing any such thing as this. What would it look like in the Constitution of the United States to have had a provision in that Constitution that offices to be filled under that Constitution should not be filled by members of the Constitutional Convention of the United States? If such a provision had been there, would it not have merited and received the contempt of every thinking man? And what would have been the effect? We should not have had Washington for the first President. We should have lost a whole galaxy of great names. If we adopt the provision that no member shall be elected to the office of Railroad Commissioner, while we are overturning the Supreme Court to make a new Supreme Court, and making seven members, why not make a provision that no member of the Convention shall be eligible for that high office? I do not remember that the Chairman of the Committee on Judiciary proposes to interject any such provision into the article on judiciary.

MR. WILSON. I will.

MR. CROSS. Why don't you offer it.

MR. HILBORN. I offered it and the gentleman voted for it,

MR. CROSS. I do not understand that the position is one which should take from a member of the Convention his rights as a citizen of this State. I do not know whether we have any fit material in this Convention for Railroad Commissioner or not. But the people of this State are the ones to determine that question and not this Convention. One thing is sure that certain persons upon this floor who have from the first opposed this Railroad Commission must by this time understand that their chances for being elected Railroad Commissioners are exceedingly small, and it may be for that reason that they seek to interject so miserable a provision into it. If there is any member of this Convention who has been able to pass the trying ordeal and so maintain his position as to satisfy the people that he has done his best for the highest and best interests of this State, why should the people of the State be cut off from having the serviees of such a man. For my part, sir, I would consider myself contemptible if I voted that any man upon this floor should become ineligible under the Constitution of this State, because he had helped to make this Constitution.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: A great many gentlemen have told us what they think, and while it may probably be of little interest what I think, still, as it is the fashion, I shall say what I think; and here goes. It is this, Mr. President, that it is high time that we put an end to this disgraceful farce. That is all. The gentleman who offered this amendment did so for no other purpose in the world only as a joke. That is what he intended, and he had not the remotest idea that it would lead to such a discussion as this.

MR. WILSON. I have offered it in dead earnest, and I am in favor of it.

MR. CAPLES. I will say that the gentleman was aglow with laughter when he introduced it, and I beg to say that the Convention understood it as a joke at the time. I am sorry to hear the gentleman disown the joke, for I think that view of the matter would be more creditable to him than the position he takes by his explanation. Why should we do this thing? It would be a burning reproach and contempt upon the action of this body, and I am unprepared to think that any gentleman regards it in any other light than as being actuated by a feeling of hostility to the Constitution that may be framed by this body. It is well known that the gentleman who moved this amendment was violently and bitterly opposed to the leading feature of the report of this Committee on Corporations.

MR. WILSON. What was I opposed to that is contained in section twenty-two?

MR. CAPLES. The Commission.

MR. WILSON. I was not, sir. I was in favor of the Commission; but I differed from this section, as I wished to require it to be subject to the control of the Legislature, and not independent of it.

MR. CAPLES. I understand that the gentleman favored such a Commission as they have in Massachusetts, an Advisory Commission. It is understood by the people of this State that an Advisory Commission is no Commission at all, and it would be the equivalent of doing nothing. But when I say that the gentleman was opposed to the whole scheme, I say no more than is understood by the members upon this floor.

MR. WILSON. I was in favor of the Commission, and am now with certain regulations.

MR. CAPLES. I admit that the gentleman was in favor of an Advisory Commission, and I think I will be supported by the view of this Convention, when I say that such a Commission is sounding brass and tinkling cymbals. It is a cheat, a delusion, and a swindle. It may operate in Massachusetts, but it won't here.

THE PRESIDENT. The gentleman must confine himself to the question before the Convention.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I am rather sorry that this Convention should have had this motion presented for a third time. It is true, it has come in a certain form that would convey the idea that every delegate here is a candidate for some office. Now, in order to counteract that, some one offers a proposition shutting them entirely out. I think they may feel very hardly about it. I do not think there are as many candidates as they seem to think, and if there are it is a question between themselves and the people. It is a matter with which we have nothing at all to do. This amendment places members in an awkward position. If they do not vote for this amendment everybody says: well, they are candidates. Now, as I suppose I have never been charged with being a candidate, I will say that I am opposed to this amendment. I am opposed to wasting the time of this Convention. We might have finished this report and entered upon another one. I look upon this proposition as foolish, and not offered in good earnest.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from San Francisco, Mr. Wilson.

The roll was called, and the amendment rejected, by the following vote:

AYES.

Biggs,	Kenny,	Schell,
Condon,	Laine,	Shafter,
Dudley, of Solano,	Lavigne,	Shoemaker,
Freud,	Lewis,	Stuart,
Gorman,	McFarland,	Thompson,
Gregg,	Miller,	Townsend,
Hager,	Mills,	Turner,
Harrison,	Morse,	Vacquerel,
Hitchcock,	Murphy,	Van Voorhies,
Howard, of Los Angeles,	Nelson,	Wilson, of 1st District,
Huestis,	Pulliam,	Winans,
Jones,	Ringgold,	Mr. President—37.
Joyce,		

NOES.

Andrews,	Grace,	Prouty,
Ayers,	Hale,	Reed,
Barbour,	Harvey,	Reynolds,
Barry,	Heiskell,	Rhodes,
Barton,	Holmes,	Schomp,
Beerstecher,	Howard, of Mariposa,	Shurtleff,
Bell,	Hughey,	Smith, of Santa Clara,
Blackmer,	Hunter,	Smith, of 4th District,
Boucher,	Inman,	Smith, of San Francisco,
Brown,	Johnson,	Soule,
Burt,	Kelley,	Steele,
Campbell,	Keyes,	Stevenson,
Caples,	Kleine,	Sweasey,
Chapman,	Lampson,	Swing,
Charles,	Larkin,	Tinnin,
Cross,	Larue,	Tuttle,
Crouch,	Lindow,	Van Dyke,
Davis,	Martin, of Santa Cruz,	Walker, of Marin,
Dean,	McComas,	Walker, of Tuolumne,
Dowling,	McConnell,	Waters,
Doyle,	McCoy,	Webster,
Dunlap,	McNutt,	Weller,
Estee,	Moffat,	Wellin,
Estey,	Moreland,	West,
Evey,	Nason,	Wickes,
Farrell,	Neunaber,	White,
Filcher,	Ohleyer,	Wilson, of Tehama
Garvey,	O'Sullivan,	Wyatt—85.
Glascock,		

PAIRED—Mr. Hilborn, aye, paired with Mr. Herrington, no.

POWERS OF THE COMMISSION.

MR. CAMPBELL. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out after 'shall,' in line fifteen, section twenty-two, to and including 'Courts,' in line twenty, and insert, 'have power to issue subpœnas and other necessary process, to send for persons and papers, administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record. They shall also have power to correct abuses in the administration of railroads and other transportation companies, to hear and determine all complaints against them, to issue such process as may enable them to do so, and to enforce their decisions in such respects through the medium of the Courts. It shall be the duty of all Sheriffs and Deputy Sheriffs to execute the process and orders of said Commissioners. Said Commissioners shall be allowed to travel free of charge upon all such railroads and on the conveyances of all such transportation companies in the discharge of their duties.'"

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: The object of this amendment is to make the section clearer, and also to impose the duty upon the Sheriffs and deputies of executing the processes issued by the Commissioners; and, further, to allow the Commissioners to do as they are allowed to do now by law, to travel free upon all these conveyances in the discharge of their duties. As the amendment reads, it provides that they shall have the power of examining the books and records. It would read in this way, commencing at line thirteen, after the word "make:"

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"To examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall have power to issue subpœnas and other necessary process, to send for persons and papers, administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record."

That gives them that power for the purpose of enabling them to examine the books and records of all railroad and other transportation companies. Then follows this:

"They shall also have power to correct abuses in the administration of railroads and other transportation companies, to hear and determine all complaints against them, to issue such process as may enable them to do so, and to enforce their decisions in such respects through the medium of the Courts."

Then is added the duty of Sheriffs to execute their process in this way:

"It shall be the duty of all Sheriffs and Deputy Sheriffs to execute the process and orders of said Commissioners. Said Commissioners shall be allowed to travel free of charge upon all such railroads, and on the conveyances of all such transportation companies, in the discharge of their duties."

It goes down to the word "Courts," in line twenty. It simplifies the section and makes it simple and complete in its operation.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I trust that that amendment will be adopted. It is necessary to give legal sanction to the acts of the Commission, and it is not wise to create a tribunal with powers and give it no power to enforce its action. Therefore it is that the amendment of the gentleman from Alameda is a proper amendment, and I think will aid and facilitate the Commission very much in enforcing their action and their orders and decrees in relation to transportation.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: So far as I have been able to read that section, as proposed by the gentleman, he wishes to make it the duty of certain executive officers to serve the process and writs of this Commission. Originally it was the intention of the committee not to make this section self executing entirely, but it was so amended by the Committee of the Whole that penalties were attached to it, and it was made as near as possible self-executing. Therefore I think that part of the gentleman's amendment will meet a necessity if we leave the section as amended by the Committee of the Whole. It provides for the duties of the Commissioners; it prescribes how they shall perform their duties; it fixes penalties; and this amendment, except the change in certain verbiage, only meets the one point, making it the duty of Sheriffs and Deputy Sheriffs to serve their writs and process. I see no objection to it, and, for one, I would like to see it adopted.

MR. HEISKELL. Mr. President: I confess that I do not understand the amendment In reading the amendment alone, it cannot be understood. But there is just one part of it that I would like to see stricken out, and that is making the railroad carry the Commissioners free. Mr. Adams, of Massachusetts, has just resigned his position as Railroad Commissioner, and he gives no other reason in the world than that there were so many little attentions and courtesies shown him on their trains that he could not, out of considerations of hospitality, fill the office. I hope Judge Campbell will strike that part out, although I think it is really very beneficial.

MR. ESTEE. I would like to state that it should be understood that this State now pays interest on a million and a half of dollars, namely: One hundred and five thousand dollars a year, to these companies, and that hitherto we have been transporting public property free, under that arrangement, or a certain class of public property, like arms, and I suppose that was the reason this was put in.

MR. HEISKELL. I made the suggestion for the reason Mr. Adams gave.

MR. ESTEE. I think probably it had better be left out.

MR. CAMPBELL. Strike it out.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I am in favor of the amendment of the gentleman from Alameda, and for the reason that the section now seems to be vague as to where the Commissioners are to get their process and how they are to enforce their orders. The amendment of the gentleman makes it perfectly clear that they shall have power to issue their own process. It makes it imperative upon the officers, upon the sheriffs, and the deputy sheriffs, to execute that process. In other words it clearly and distinctly constitutes them a Court for the determination of the matters that are placed within their jurisdiction, and therefore, it is an improvement upon the section as it stands. It is in accordance with the spirit of the section. As far as riding free upon the railroads is concerned, I do not see that that is any objection at all. Mr. Adams in his letter states that he resigns by reason of the courtesies that he received from the railroads; but the facts are, in the case of the Government Commissioners of which Mr. Adams was one, their salary was paid by these railroad companies. Here the salaries of these Commissioners are not paid by the railroad company, but are paid by the State out of the State Treasury and not out of the railroad companies' treasury. As far as riding upon the trains that run upon the railroad is concerned it is giving them no more privilege than a privilege of entering a warehouse of the company, or the privilege of entering the private office of the company, or the privilege and power of opening the safes of the company, and examining the books of the company. You might just as well say that there was danger of these Commissioners going to Fourth and Townsend streets in San Francisco and going into the office of the Southern Pacific Railroad Company there and occupying the rooms of the company there to make an examination, that there was danger that the company might treat these gentlemen too generously, and therefore, they could not act properly. Of course if there was anything extraordinary connected with this it would be objectionable, but wherever there are Railroad Commissioners in the States they have the right to ride over the roads free of charge. Why, because they ride over them on public business. It is their duty. When this State pays over one hundred thousand dollars a year to the railroad companies of this State, it has a perfect right to say that the railroad must carry its officers free of charge. In the interest of economy I urge that the amendment ought to pass as offered. In the case of Mr. Adams, the railroad companies actually paid Mr. Adams a salary. Here we want to give them the power to ride over the roads just as we give them the power to enter the office of the company. There is no danger in it at all. It is a right that is exercised in every State in the Union where a Commission of this character exists.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I would just like to call the attention of the Convention, in this connection, to the Act of eighteen hundred and sixty-three and sixty-four, relative to the duties incumbent upon the Central and Western Pacific Railroad Companies. By this Act the State guaranteed the interest on one million five hundred thousand dollars, which amounts to one hundred and five thousand dollars a year that the State pays. Now, section four of that Act, which is the obligation that the companies assumed to the State, provides that they shall transport all public messengers, or convey over their road the public messengers and all public property. That is the only consideration the State gets, except the construction of the new railroad. I apprehend, therefore, on a more careful consideration, that it will not be imposing any burthen upon them, so far as the Central and Western Pacific are concerned, or place the State or the Commissioners under any obligations to them for traveling over their roads while the State pays one hundred and five thousand dollars a year to promote the railroad interest. I merely call the attention of the Convention to this fact, as it may have escaped the consideration of some of the members.

REMARKS OF MR. JONES.

MR. JONES. Mr. President: For myself, sir, I am not satisfied with the article reported by the Committee of the Whole, either as it stands, or as it is proposed to be amended. In fact, to my mind, the amendment increases the objections to the article. I know very well that I am speaking for one view of this section, and of the governmental and constitutional principles involved in it. I understand perfectly well that there are gentlemen here of large experience and learning, who take a diametrically opposite view, but to me this is a departure such as I have not met with in any reading of mine, or in any information gathered in any way of any government which has been known upon the North American Continent. It is a departure from the principles which, in general, the people of the United States have heretofore adhered to in these respects. In this State, with its regular State Government divided into coordinate branches, the legislative, executive, and judicial, this section, it seems to me undeniable, is erecting a new tribunal, possessed of legislative and judicial functions of the very highest character, only limited to one great and important branch of the public interests and industries. The only distinction between it and an absolute Legislature in a Court of last resort is, that its jurisdiction is not general. It only reaches—and that is a great deal—to the entire transportation business of this State, so far as such transportation business is conducted by companies or corporations.

Its machinery consists of three Commissioners, but two of them may act. If gentlemen will regard the language of the section they will see that it amounts to this: That two men in this State shall be selected. They shall first make certain laws within the scope of those matters which they are to treat of. After having made these laws, they shall sit as a Court of last resort in judging of their interpretations, in judging of their infraction, and in judging of the punishment to be meted out; and they shall have the power to inflict that punishment by their own process, and by substantially their own officers, for the Sheriffs are made their officers by the amendment, though not by the original section. I undertake to say that this is something that has never been seen and never before heard of, so far as I know, in any State in this Union, to ask a State to erect in the midst of the coördinate branches of their State government a power like that—legislative and judicial, so far as its action is to pertain to its own legislation, and no other. And when this high Court, then, having sat upon and determined upon its own high legislation, it is authorized here, as I understand it, to impose a fine for any breach of the laws it has passed, and perhaps for any contempt it may adjudge may be committed towards it, of twenty thousand dollars for each offense. It is the judge of its own contempt, and if a contempt has been committed, it can cause the party to be incarcerated until he shall have performed the act required, or until he is punished according to their sense of justice and propriety. Now, I wish to say, in brief, that to me that seems to contain all that could be contained in any absolute edict by any power, the most absolute in the world, within a generation. The Emperor of Russia cannot do more than that in Russia. He cannot do more than that to his railroads and the men that run them, or the persons that he sees fit to call upon as witnesses to ascertain any fact in regard to them.

Now, if all this seems to be absolutely necessary to the State in order that the State may have control over these corporations, I should have to study a while longer before I would take such control from the State. But I think that a power may be given to these Commissioners entirely

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sufficient for the efficient performance of the duties necessary for them to perform in order to protect the people of this State from the abuses complained of, and to put the control of these corporations within the power of the State; and that these Commissioners may be coördinate with the Legislature; that their judicial functions may be enforced by the Court.

I propose if I have an opportunity to offer an amendment to this section, which I claim gives to the Commissioners all the authority which it is wholesome they should have, and all the authority it is wholesome for the people to part with, and all that is necessary to the efficient performance of the duties desired by the people. I would like to have it read for information.

THE SECRETARY read:

"Amend section twenty-two by striking out all after the word 'Commission,' in lines nine and ten, and add as follows: 'Said Commissioners shall have the power, and it shall be their duty, to revise the rates and charges for the transportation of passengers and freight by railroad and other transportation companies, as fixed by such companies; and, whenever they shall deem it necessary or just, to provisionally alter such rates and charges, and to establish just rates and charges for such transportation, and to publish the same from time to time, subject, however, to the revision and alteration of each successive Legislature. They shall also have power, and it shall be their duty, to collect all available statistics and information that may serve as a reasonable basis for their own action in the performance of their duties, and for the action of the Legislature in the regulation and control of such corporations, and in the regulation of freights and fares for the transportation of freights and passengers by such transportation companies. Said Commissioners shall at least biennially, and at least six months before the regular biennial meeting of the Legislature, file in the office of the Secretary of State a compiled and digested report of their proceedings, and of all the useful statistics and information collected by them in pursuance of their duties, together with their recommendations, for the information of the people and of the Legislature of the State. For the purpose of the performance of their duties said Commissioners, and each of them, shall have the right to examine the books, records, and papers of all railroad and other transportation companies, and they shall have the process of the Superior Court of the county in which such books, records, and papers may be, to enforce such right; and shall have the right and power to send for persons and papers, to administer oaths, and take testimony; and any witness who shall willfully swear or affirm falsely to any material matter before said Commissioners, or any of them, shall be guilty of the crime of perjury; and any witness who shall, when duly cited to appear and testify before said Commissioners, willfully refuse, or neglect to so appear and testify, shall be guilty of contempt, and shall be punished therefor, upon proper complaint and notice by a Superior Court, as in cases of contempt of such Court. Any officer of any railroad or other transportation company, and any person having the care, custody, or control of the books, records, papers, or documents, of any such company, who shall refuse any of said Commissioners access thereto, when at any reasonable time requested, shall be guilty of a misdemeanor, and shall be punished therefor as may be prescribed by law; and any officer, agent, servant, or employé of any such company who shall demand or receive any greater rate or charge for the transportation of freight or passengers than the rate or charge provisionally established by said Commissioners, or as regulated by the Legislature, shall be guilty of misdemeanor and punished therefor as may be provided by law. In any action against any railroad or other transportation company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge, or jury, recover exemplary damages. The Legislature may impose other and additional duties, and confer further powers upon such Commissioners, and shall provide for the printing and public distribution of the reports of said Commissioners, prior to each election of members of the Legislature.'"

MR. ANDREWS. I do not know if I understand the object of the amendment offered by Judge Campbell. If I understand it, it is to prevent the Commission from having the power to determine——

MR. CAMPBELL. It gives them power to herein determine complaints and correct abuses, but they are required to enforce their decisions through the medium of the Courts. In the first part it gives them power to issue subpœnas, etc., in relation to books and papers, and it gives them the power to issue process and compel the attendance of witnesses; to examine them under oath and punish them for contempt without going to any Court whatever, under any circumstances. As for the other part, it leaves it, as I took it was the intention of the section, with the power for them to correct abuses, and herein determine complaints; and their decisions in that respect are to be enforced by the Courts. That is the clear language of it, and after the gentleman hears it read again, he will see that that is its intent and purpose.

MR. ANDREWS. As I understand the amendment of the gentleman from Alameda, it would strike out, from the commission, that power to determine in the same manner and to the same extent as Courts of record.

MR. CAMPBELL. The gentleman is mistaken in its bearing. I ask the Secretary to read my amendment.

THE SECRETARY read:

"Strike out after 'shall' in line fifteen, section twenty-two, to and including 'Courts,' in line twenty, and insert: 'have power to issue subpenas and other necessary process, to send for persons and papers, administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record. They shall also have power to correct abuses in the administration of railroads and other transportation companies, to hear and determine all complaints against them, to issue such process as may enable them to do so, and to enforce their decisions in such respects through the medium of the Courts. It shall be the duty of all Sheriffs and Deputy Sheriffs to execute the process and orders of said Commissioners. Said Commissioners shall be allowed to travel free of charge upon all such railroads and on the conveyances of all such transportation companies in the discharge of their duties.'"

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

Seconded by Messrs. Huestis, Stuart, West, and Ayers.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President. In regard to this amendment, I hope that the provision in regard to the Commissioners riding free will be retained, and I think there is a mistake in regard to that in the Convention. It is not that they ride over the roads by favor of the companies, but by virtue of the sovereign power of the State. The people engraft it in the Constitution. They do not go there asking a favor of the company, but they go there armed with the Constitutional power to demand, as a right, that they shall ride on the road. That is what Mr. Adams complained of, that in his case it was a matter of favor by the company. This is an entirely different case. The Railroad Commissioners of this State ride free by virtue of an Act of the Legislature. Mr. Tuttle went on the road, and he announced that he was the Railroad Commissioner. The conductor says: "I do not know you; you must get off, or you must identify yourself." Mr. Tuttle says: "I am the Railroad Commissioner. It is your business to know who I am, because the State says I must ride free. I demand, sir, by virtue of the authority of the Legislature of the State of California, to ride free here, not as a matter of favor or concession, but as a matter of right." And that is what it would be here. These Commissioners are under no obligation to the railroad at all. There is no analogy between their case and that of Mr. Adams. In his case he rode free by their courtesy, and I believe that they paid him, and he says he resigned the position for that reason. I hope that this provision will be retained, that they shall, by virtue of the Constitution itself, have the right to ride free.

In regard to the other portion of the amendment, so far as I understand it, I think it is an improvement upon the other. I would like to see Judge Campbell put in a clause after the word "enforce," so that it will read, "to herein determine all complaints against them; to issue such process as may enable them to do so, and to enforce the rates of charges established, and their decisions, in all respects through the medium of the Courts." Now, that is not in there. There is no power to enforce their decisions in regard to rates of charges established. The words "in such respects," as found in the amendment, apply only to the last clause, that "they shall have power to correct abuses in the administration of railroad and other transportation companies; to herein determine all complaints against them; to issue such process as may enable them to do so, and to enforce their decisions in such respects through the medium of the Courts." "In such respects," is limited to that clause. If you say "all decisions through the medium of the Courts," then it would be comprehensive, but by the use of the term "in such respects," it is a limitation upon the sentence. It ought to come out. I have found that there is a defect in this Commission for the reason that the Commissioners, or the parties aggrieved, have no right to enforce, in a summary way, the rates of charges established by the Commissioners. There ought to be some easy and summary way, when rates of charges are established, by which the party aggrieved shall have his remedy, and that the Commissioners may enforce their decisions in that regard through the medium of the Courts, and compel the performance and acquiescence of the railroad. The penalty is by fine, which is no remedy at all. It ought to be distinct that the Commissioners have a right to enforce their orders. That, I think, is the most essential part of this Railroad Commission, if we are to derive any benefit from it whatever.

MR. CAMPBELL. I have another amendment that will cover it.

MR. HAGER. I insist that "in such respects" ought to be stricken out.

MR. CAMPBELL. No. I think the danger of that would be this, that where, for instance, they had punished for contempt, as previously provided, they would have to go to the Courts to enforce that decision. There is the difficulty about that. Now, there is an omission, I find, in my amendment, which ought to be corrected, and that is, after saying, "They shall also have power to correct abuses in the administration of railroads and other transportation companies, to hear and determine all complaints against them, to issue such process as may enable them to do so," the words ought to be inserted, "and punish for contempt thereof, in the same manner and to the same extent as Courts of Record, and to," I ask leave to insert these words in my amendment.

MR. HAGER. There is no power to enforce that in this section. They ought to be allowed to go into the Courts and compel the company to comply with the rates of charges established.

MR. CAMPBELL. I add an amendment to the subsequent portion of the section, a separate amendment, which would cover that. I would ask leave to insert these words in my amendment.

THE PRESIDENT. If there be no objection, leave is granted.

MR. GREGG. Mr. President: The original section, reported by the Committee on Corporations, had this proposition which is in the amendment. I believe this whole section, as reported by the Committee of the Whole, turned upon the amendments which now throws it directly back to the provisions reported by the Committee on Corporations; it is virtually adopting the original section reported by the Committee on Corporations. I do not understand the purpose of the amendment. It makes it too general. If we depend upon the corporations, let us say so directly, as the report of the Committee on Corporations originally stood; if we do not, let us retain the section as reported by the Committee of the Whole.

MR. SHAFTER. Mr. President: It seems to me that the section is defective, and also the amendment proposed by Judge Campbell. It gives the Commissioners power to "hear and determine all complaints against them." They may hear and determine all complaints against

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corporations, but are not authorized to hear any complaints on their side. I think the words "by and" ought to be inserted before the word "against."

MR. AYERS. Mr. President: I submit that the railroad company does not allow any of its customers to get in debt to them. They exact payment on delivery, at all times and in all cases, and have no need to make complaint on that score.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: An amendment which is very lengthy, involving a large number of propositions, which is only read twice at the Secretary's desk and copied by a few at most, is liable to be misunderstood. Now, sir, I think I understood fully the temper of this Convention when it acted in Committee of the Whole upon this matter. I understood it to be the purpose of the Convention, acting as Committee of the Whole, to give to the Railroad Commission power, first, to establish rates of freights and fares; second, to hear and determine complaints against railroad companies where their reasonable rates are not complied with; and, third, when so determined, to enforce their provisions. They were given these three powers: first, legislative, in establishing rates of freights and fares; second, judicial, in hearing and determining cases; third, in enforcing their decisions. This amendment, so to speak, takes the whole life and efficiency out of the whole provision. In our anxiety to do too much, let us not lose the whole matter. This provision provides that the Commission may establish rates of freights and fares, and hear and determine cases, but when they have so determined it has no validity whatever. That is, the Railroad Commission, under this amendment, has no power as a judicial body. I understood that the Convention wanted to give them some judicial power, and it attempted to do so. But the result of this amendment, very clearly, is to take that power away from the Railroad Commission.

MR. CAMPBELL. It is the same in that respect as it was in the original.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. Campbell.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Hager,	O'Sullivan,
Beerstecher,	Hale,	Rhodes,
Blackmer,	Harvey,	Ringgold,
Boucher,	Hitchcock,	Shoemaker,
Brown,	Holmes,	Shurtleff,
Burt,	Howard, of Los Angeles,	Smith, of 4th District,
Campbell,	Howard, of Mariposa,	Soule,
Caples,	Huestis,	Steele,
Chapman,	Hunter,	Stevenson,
Charles,	Inman,	Stuart,
Crouch,	Johnson,	Sweasey,
Dean,	Lampson,	Thompson,
Dudley, of Solano,	Larue,	Van Voorhies,
Estee,	Lewis,	Webster,
Estey,	Lindow,	Weller,
Evey,	Martin, of Alameda,	West,
Filcher,	McConnell,	Wilson, of Tehama—53.
Garvey,	Nason,	

NOES.

Andrews,	Keyes,	Schell,
Barbour,	Laine,	Schomp,
Barry,	Larkin,	Shafter,
Barton,	Lavigne,	Smith, of Santa Clara,
Belcher,	Mansfield,	Smith, of San Francisco,
Bell,	Martin, of Santa Cruz,	Swenson,
Biggs,	McComas,	Swing,
Condon,	McCoy,	Tinnin,
Cross,	McFarland,	Townsend,
Davis,	McNutt,	Tully,
Dowling,	Miller,	Turner,
Doyle,	Mills,	Tuttle,
Farrell,	Moffat,	Vacquerel,
Freud,	Moreland,	Van Dyke,
Glascock,	Morse,	Walker, of Marin,
Gorman,	Murphy,	Walker, of Tuolumne,
Grace,	Nelson,	Waters,
Gregg,	Neunaber,	Wellin,
Harrison,	Ohleyer,	Wickes,
Heiskell,	Prouty,	White,
Hughey,	Pulliam,	Wilson, of 1st District,
Jones,	Reddy,	Winans,
Joyce,	Reed,	Wyatt,
Kelley,	Reynolds,	Mr. President—73.
Kenny,		

MR. MCFARLAND. Mr. President: I send up an amendment to section twenty-two.

THE SECRETARY read:

"Strike out all after line ten and insert, 'to inquire into abuses by railroad corporations and other transportation companies, and report the same, annually, to the Governor; and to exercise such further powers over such corporations and companies, as shall be conferred upon them by the Legislature. The Legislature shall provide for the enforcement of the powers hereby given said Commissioners, and for the enforcement of such other powers as shall be hereafter conferred on them by law.'"

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I do not desire to reopen this discussion, but I wish briefly to state my views. I offer this amendment now, sir, with the hope that after two or three months deliberate reflection this Convention may possibly have come to the conclusion not to give the arbitrary and despotic power to any three men, which is contained in this section. My amendment strikes out all after the tenth line. The Convention will see what is then left. It gives the Commissioners power to examine into all abuses by railroad companies and other transportation companies, and report the same, annually, to the Governor. It also provides that it shall have such other powers and supervision over these companies as shall be given it by the Legislature, and that the Legislature shall provide for the enforcement of the powers given the Commissioners. Now, sir, I believe that in any new system of law we need experience, and we can only arrive at what is true and just by experience. My amendment gives to the Commissioners, in the first place, the power to examine into all abuses. It gives the Legislature the power to confer upon them the authority to correct those abuses. If they find abuses and have not sufficient power to reach them, this amendment gives the Legislature the power to confer upon them further powers, from time to time, as necessity shows needful; and in the end they could confer upon them all the powers conferred here, if necessary. But it would not be an attempt to put in one clause of the Constitution a provision which by one blow takes away all control of this matter on the part of the Legislature, and sets up a Commission, first, with power to legislate upon the subject; second, to decide judicially upon their own legislation; and in the third place, to execute their own decrees. It is creating a government within a government. It is taking away from the sovereignty of the State a large portion of its just and well recognized powers, and giving them to three men, irrevocably and irretrievably. It appears to me that the method I propose is one that can grow up in accordance with the demands of the people from time to time. Additional powers can be conferred whenever necessary, and if the powers are not sufficient to remedy evils, and yet the whole power is kept in the hands of the people through their Legislature. I hope that the amendment will be adopted, though I cannot say that I expect it will. I believe that under it a system would grow up that would be satisfactory to the people and just to the companies.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I do not desire to prolong the discussion upon this question, because I do not believe the Convention desire it, or will change. I opposed this measure in the first place, and then gave my reasons. More mature reflection has but fastened that conviction upon me with increased power. I am satisfied that we are now entering upon a scheme that will be injurious to the people of this State. I am satisfied that we are abandoning our system of government and drifting into a position which will only be followed by calamity. In my intercourse with the people, and in trying to arrive at a just conclusion, I have found no one outside of this Convention who favors it. I may state, without impugning the motives of any man upon this floor, that this scheme is perfectly satisfactory to the railroad company; and I draw that conclusion not only from these provisions, but from the fact that whenever a Legislature meets in this State, whenever the railroad has anything to fear from what may be done, it chokes this lobby and these corridors with men of influence, to prevent its being done. But, sir, since this scheme has been fastened upon this Convention, so that it was evident that it would be adopted, there has been no such lobby, and no such influence, and it is as silent as the grave. I believe, now, that they are in San Francisco chuckling over our folly. I desire to enter my solemn protest against the whole scheme. I know in my own judgment that it will pass; that a majority of this Convention will indorse it. I am satisfied that it will. But there is a minority here of some respectable gentlemen, at least, and we simply desire of this Convention to have an opportunity to place upon permanent record our views in this matter; and I am before the Convention simply to ask that when these amendments are disposed of, they will permit that minority to present what views they believe to be correct, and have a vote, with the ayes and noes, upon it. This is what I desire to offer. I simply desire to read it. It is this:

"The Legislature shall pass laws to correct abuses and prevent unjust discriminations in the rates of freight and passenger tariffs on the different railroads in this State, and shall, from time to time, pass laws establishing maximum rates for the transportation of passengers and freight on said railroads; provided, that said maximum rates shall not exceed three cents per mile for passenger rates nor three cents per ton per mile for freight, which maximum rates are hereby fixed and established until the same shall be lowered by the Legislature."

Thereby we will accomplish something, and leave it to the people of this State, after the ordinary manner of governments being managed heretofore, to work out the problem. I hope that the Convention will allow me, when the time comes, to offer this, and such persons as believe not in abandoning our system of government, may place their names on record.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I concede to every man on this floor the right to have their own views, and they have the right to the expression of their opinion in regard to carrying out the report of the Committee of the Whole. The intimation of the gentleman from Santa Clara that the railroad company is satisfied with that report is no matter that concerns me. I know and he knows full well that they have attempted, through their press and otherwise, to intimidate us and denounce any action of this Convention affecting their interests. I know that they have sought, in different ways, to force an adjournment of this Convention, until this Convention has been a month defeating

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measures of adjournment. This is one of the most important questions that we were called together to decide. Every man who is familiar with the course of the Legislature of this State since its organization, knows that it has been the supreme power in the State; that it has dictated legislation; that it has controlled it; and it now asks, through its agents here upon this floor, to hinder this equitable legislation in the interest of the people. I say to you members who have been here, who came here in good faith, stand by the report of your Committee of the Whole. Stand by that. The people will indorse it, and those men who go out and spend a majority of the time looking for a man to indorse this Constitution, will, when we adjourn find plenty of them that will indorse the action of this Convention, and repudiate those who have stood in the way of it. We have accomplished a good work, and we should stand by it and submit it to the people, and it will be carried by a two-third vote of this State. Don't accept any other. No intimidation. I am willing to go upon the record. I have been here every hour since we met, and the record I make I am willing to stand by. The people will determine that this shall be the Constitution of the land.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: As I took up no time in Committee of the Whole upon this subject, I desire now to make a plain statement of my views. I am opposed to the report of the Committee of the Whole; and I want gentlemen to understand that I do not wear the collar of the railroad, nor any corporation, nor anything else. I am opposed to this report. It gives too much power to these men. I am decidedly in favor of the amendment suggested by Mr. Laine, of Santa Clara. It is what the people want, and what they expect. I do not propose to tie up the railroad with what two individuals can do. There is no appeal. They are lords of all California; they are the lords of everything. They control everything, and there is no way of reaching them, except by a two-thirds vote of the Legislature. It is nearly impossible to impeach them or turn them out of office. I expect to vote against every amendment that has been offered, and the report of the Committee of the Whole. I believe that gentlemen are divided upon this question. They will see that if they will adopt something like the amendment suggested by the gentleman from Santa Clara, that it is what the people of this State want. I have confidence in the people, and believe it would be wisdom in this Convention to adopt the amendment which was read by the gentleman from Santa Clara, Mr. Laine.

MR. LARKIN. Have not the Legislature that power now, without calling this Convention?

MR. BIGGS. They have not, most emphatically. I hope the gentleman will pay attention and he will see: "Provided, that said maximum rates shall not exceed three cents per mile for passenger rates, nor three cents per ton per mile for freight, which maximum rates are hereby fixed and established until the same shall be lowered by the Legislature." Put it in the Constitution in living letters—in golden and glittering letters—that every person in the State may know what it is.

MR. SWENSON. Is not that more than what the railroad companies charge now?

MR. BIGGS. No, sir, it is not. In the interior it is more than double that. It may be on the little roads around San Francisco.

MR. SWENSON. Did not you indorse this same proposition?

MR. BIGGS. Never have I indorsed any such thing. I say if the railroad is corrupt, and if they control Legislatures as is charged here, it is much easier to control two individuals than it is to control a whole legislative body.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: I offered a few remarks when this question was under consideration before, and I should have been content with that had it not been for the insinuation of the very eminent statesman from El Dorado. Now, it is a very easy matter for gentlemen to intimate that all who differ with them are corrupt, or that they have fallen down before the railroad company. It is very easy to intimate that we have not come here in good faith. No gentleman came here in better faith than I did. No gentleman came here more untrammeled than I did. No gentleman came here with less good feeling towards the railroad company, as such, than I did. Very few have had more occasion to feel rather dissatisfied with it than I have. But I recognize this fact; that this power over the corporations is a power that belongs to the people of the State of California; that for ten, fifteen, or twenty years the people of California and the United States have been contending that that power belonged to the people.

Now, it is proposed here, by one fell swoop, to take that power from the people and give it into the hands of a triumvirate. That triumvirate to a very great extent is independent and above and beyond the reach of all the other branches of the government of this State. Now, I believe it is a mistake. I believe it will prove to be a sad mistake; it will be worse than a snare and a delusion, as said by the gentleman from Sacramento. He affirmed that a Commission without this provision would be a delusion and a snare. This will prove a deep and a bad one, and it will be many years before the people are extricated from it. I believe that this State ought to have a Commission. I believe it should have been a Commission with advisory power; but I protest against the people surrendering this power over the railroads and over the corporations. It is a power that belongs to the people, and it is a power that the people are capable of using, and using judiciously. It is the saddest mistake this Convention has made to put it into the hands of this Commission.

MR. CAPLES. Mr. President: I understand the gentleman to say that he is opposed to taking the power from the people and putting it in the hands of the Commission. Is the gentleman opposed to taking away from the people the executive power of the government and putting it into the hands of one man?

MR. DUDLEY. It is necessary that we shall have officials; these officials are amenable to the legislative branch of government, and this Commission, to a very great extent, is not; now, I shall vote for the amendment offered by the gentleman from Sacramento, Mr. McFarland, although it is not what I would like, it is not what I desire. I wrote a proposition here that would have suited me, and I believe it is the best thing that could be had, but I am very much like others, and much inclined to think that my own ideas are the best. I do not propose to press them because it will be only wasting time, I am satisfied that they would not be indorsed by the Convention. I have no doubt but what the report of the Committee of the Whole will be indorsed, and I simply rose for the purpose of assigning a few reasons why I am opposed to it, and to say that, notwithstanding, the insinuations of the gentleman from El Dorado, I came here in good faith, and propose to act in good faith as I have in the past, according to my judgment, in this matter for what I think will be the best interests of the people of this State.

MR. HEISKELL. Mr. President: I have just one word to say. The gentleman from Santa Clara is opposed to it because it changes our form of government. That seems to be the position of the gentleman from Solano. I wholly dissent from it. I maintain that these Railroad Commissioners are just as near the sovereign power of this State as the Legislature.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. I do not propose to attempt to go over this subject again. I have only to say that the minority here have a right to present their views and put themselves upon the record, and I will aid them in doing that in every possible way. I am glad that the gentleman from Sacramento has offered this amendment, because it shows one thing about which there has been attempted to be some quibbling here. It shows that, together with other propositions presented here, that the railroad companies, from the beginning to now, have been opposed to this commission; and if anything was wanting to the letter of the President of the Central Pacific Railroad Company, which was written expressly to attack this Commission, the persistent action of the friends here would remove all doubt.

Now, sir, I have no time to go over this subject, but in relation to keeping this in the hands of the people, I say it is as much in the hands of the people in the hands of the Commission as it is in the hands of the Legislature. The members of the Legislature are only representatives, they are only attorneys, they are only agents of the people.

MR. BIGGS. Will you allow me to ask you one question? Can you find, in any Constitution of any State in the Union, where there is any Railroad Commissioners having the power you propose to give them in this?

MR. HOWARD. What of that? You might as well ask me what is in the Pentateuch. I do not propose to go into the argument. I say, that in nearly every State in the Union there is a Railroad Commission; and it is immaterial whether it is organized by the Constitution or by the Legislature. That is the fact about it. Now, sir, I repeat that a representative is merely a trustee or agent of the people. The whole Government, from top to bottom, is representative, and nothing more. Therefore, it is idle quibble to say that we take the power from the people when we give it to a Commission; we give it to the Commission as we give judicial functions to the Supreme Court, because these respective tribunals are the most intelligent, the most learned, and the most fit for the functions of government which the Constitution confides to them. It is a mistake to say that we take it from the people. There is nothing in it. It is a fallacy.

Now, sir, it was said on a former occasion—and there is another idea advanced here. Those who in the beginning were entirely, or many of them, entirely opposed to any Commission, have now fallen down to a Commission without power; to a Commission powerless to do good or harm; to a Commission that could ride over the road and tell what experience they have had in their travels, but do nothing to regulate the corporations.

Now, sir, my only objection to this report is, that in addition to the Commission, it does not fix a maximum, as they have done in Wisconsin. It was said the other day that the Commission had been a failure in Wisconsin, and had been abandoned. I hold in my hand a letter received from the present Commissioner of Wisconsin to a member of this body, in which he says that a Commission exists there, with a maximum fixed to regulate the Commission; and he says more, that it has produced there a wonderful reformation, the benefit of which no one disputes. Now, I will ask the Secretary to read what I have marked there.

MR. PULLIAM. We want to know who it is. Read the whole letter.

MR. HOWARD. You will not know from me. The gentleman can state if he chooses.

THE SECRETARY read:

"I send you the railroad laws of this State as requested. Our State maintains its right to control railroads and all other corporations. Since the right of the State to do so has been affirmed, both by our Supreme Court and the Supreme Court of the United States, we have had no trouble, but the utmost harmony exists between the companies and the people. The Legislature at first established cast iron rates for the railroad companies, but in a couple of years they found it advisable to substitute maximum rates for cast iron rates, since which time there has been no conflict. Both the companies and the people are satisfied, and now I think the railroad companies would not repeal the law if they could; and a bill to repeal the law last winter was defeated by nearly a unanimous vote, so I suppose that the people desire to retain it."

MR. HOWARD. I wish to state merely that Mr. Nemo, the head of the bureau of statistics of Internal Revenue, has said the same thing, that wherever a Commission exists there is no trouble between the Commission and the railroad; that the railroad gives way and does what is

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right and just. Now, one word in relation to the parliamentary regulation in England. In eighteen hundred and fifty-four, there was no Commission in England with power to regulate. A debate took place in Parliament in eighteen hundred and fifty-four, and the Chief Justice stated that the Court upon whom that duty was devolved could not discharge it. Parliament organized a Commission and a subsequent decision makes the decision of the Commission binding upon all Courts. The Chief Justice said that no tribunal, except a special tribunal like the Commission which was then created, and like the Commission which we have now proposed to create, could deal with this subject with any intelligence, and with any efficiency, and with any power. That is an example for us. It is an example founded upon the experience of Great Britain, where the railroads were first organized, where they have done vast work, and where they are vast interests.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

PETITION.

MR. HILBORN. Mr. President: I wish to present a petition signed by a large number of citizens of Solano County, asking that charitable institutions be exempt from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

THE RAILROAD COMMISSION.

THE PRESIDENT. Section twenty-two and pending amendments are before the Convention.

SPEECH OF MR. GLASCOCK.

MR. GLASCOCK. Mr. President: Perhaps it becomes necessary for me to explain why I shall vote for this Railroad Commission. Some time ago there was published in several papers of this State, a notice that the people of Colusa County were opposed to the Railroad Commission. There was a meeting to consider matters pertaining to this Constitution. This matter of the Railroad Commission was discussed, but our views were unchanged. The sentiment of that meeting was against the Railroad Commission, as it stands, but they were in favor of it with the amendment which I offered yesterday. They were opposed to the commission having power to consent to the railroad company increasing its rates after having once reduced them. But, sir, I shall have to vote for this Commission. I shall do so upon my own judgment. I believe it will be for the interests of the people of this State. I believe there is some good left in it yet; and I shall support the amendment of the gentleman from Santa Clara, if he will offer it, fixing a maximum for the government of that Commission. I shall vote for it for another reason—it will take this power from the Legislature. Every other interest of the State has been compelled to give way to this one interest. I believe the railroad company have controlled freights and fares so far, and if they control these Commissioners they will do no more in the future than they have done in the past, and the people of the State will be relieved from legislating upon that subject.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. President: I take this opportunity of saying that I shall vote against this Commission scheme, believing, when I do so, that I am doing what is just and right. I believe that it is a complete delusion, and that it will not accomplish what the people desire to accomplish, and that it does, in effect, as stated by the gentleman from Santa Clara, change our form of government, and creates a Commission never contemplated by the people. I am aware that it is a very unpopular thing to do in this Convention, but I shall vote against it, and leave it to time to vindicate my action.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: As far as I am concerned, I am not going to attempt to go over the arguments that were made when this subject was under consideration before. The amendments proposed are nothing but a rehash of the old amendments considered by this Convention in Committee of the Whole, namely: Leave the whole question to the Legislature. The question has been left to the Legislature for the last ten or fifteen years, and we know exactly what the Legislature has done, and we know what they could not do. I think I may safely say that no thoughtful man, who has been in the Legislature of California, will state upon this floor that the Legislature can intelligently fix rates of freights and fares so that they will be just, and so that they will commend themselves to the consideration of the people as fair and just. They have not time to do it. They have not the means to do it. They have not the knowledge necessary. They only meet once in two years, and they have not the time to remedy the evil. Therefore it has been thought wise by the Committee on Corporations to report a measure whereby there will be a Commission. It has been admitted by people who have given this subject consideration everywhere, that any iron rule that cannot be changed as the necessities of the hour require would be a very great injustice, both to shippers and to people who are engaged as common carriers. The proper way is to have some power that can remedy the evils as they arise, hour after hour. Since the discussion of this question some time ago, Congress has taken hold of this subject, and the lower house of Congress, in pursuance of a resolution adopted, has passed a bill providing for the regulation of inter-State commerce—that is, commerce between States. One of the sections of that bill embodies the substance of the twenty-first section of this article, which we have already adopted. We find that by the Constitution of Wisconsin the Railroad Commission has about the same powers as ours will have here. The Commission of the State of Illinois is very similar to this one. It is true that the powers given them are powers given by the Legislature, and not by the Constitution. But that makes no difference as to the powers of the Commission.

Now, Mr. President, and gentleman of the Convention, I hope we will provide for a Railroad Commission. I believe that you can trust the people to elect three men who will deal fairly with these great evils. I believe it is wise to have an individual, personal responsibility resting in one, two, or three persons. Great responsibilities always bring great attention to duty, and I believe that the very existence of such a Commission will have a most marked influence upon the future prosperity of this State. I find in looking over the congressional debates on the Reagan bill, just passed, that it was shown conclusively, and not denied, that whenever wheat or corn, in the State of New York, increased in value eight, ten, or fifteen cents per bushel, the transportation companies made an increase in price of transportation by the pooling process, so that the producer received no benefit whatever from the increase in values. That was shown upon floor of Congress, and never denied. It was claimed that Congress should take charge of this matter, both as to freight and passengers, as between the States, and by a very good vote the lower house of Congress passed that bill. I think we can safely do as much as has been done by section twenty-two. I hope the amendment, as reported by the Committee of the Whole, will be adopted.

Before I sit down I wish to say one word as to section twenty-five. There is no earthly necessity for such a section. It was proposed by the gentleman from Santa Clara, Mr. Herrington, who is not here. It is that the companies shall accept in good faith the provisions of this article before they shall receive any of the benefits. Now, if any gentleman on this floor can tell me what that means I will be obliged to him. As I understand it the companies do not want this amendment adopted. I believe that to be true. And I do not see what benefits there are in particular for them to accept. They much prefer the law as it is. I speak of it now because the previous question may shut it off. I hope that section twenty-five will be stricken out, because there is no reason for leaving it there.

SPEECH OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: It seems to be the order of the day to get on the record. I wish to put myself on the record on this question. Of course I know very well it will be said that I am sold. But I know my own motives, and I do not hold myself responsible to any one on this floor. I have always opposed this Commission scheme, and I shall continue to oppose it. I do not believe in taking away this power from the Legislature. The Legislature is the direct representative of the people, and when you take that power away you are violating the first fundamental principles of Republican institutions. This is anti-Republican. It is a Commission with unprecedented power. I am in favor of a Commission, but I want the Legislature to have control of it. I want the people to control it. If I was in Mr. Stanford's place nothing would suit me better than this Commission. Why? Before he has had to buy sixty or eighty men to carry his point. Now he has a chance to accomplish his purpose by buying two men. That is the point. When I came to this Convention I came under a pledge that I would reduce the taxes of the people; that I would try to devise some means to render this Government more economical. On the contrary, the way we are creating offices, it will cost fifty thousand dollars a year more to the people, and I have yet to find out where the people will be benefited one cent by it. Now, it is said that we cannot depend upon the Legislature, and yet we propose to rely upon the discretion of three men. Why, if the Legislature is so corrupt, I want to know where you are going to find three honest men to fill these positions. Now, sir, I am for regulating these corporations, as much so as any gentleman upon this floor. I am as radical as any man can be. I do not believe in half-way measures. If you want to take radical measures I shall sustain them. But in taking such measures you must be prepared for them. I want to go according to the law. I want to do what I think is right for the people. Consequently I don't want to create an expense that the people will have to pay, and where they do not receive any benefit in return. Let us pass laws governing these corporations. Let us pass laws compelling them to do what we tell them to do. But let us not take this power away from the people which the Government gives them, and place it in the hands of three men. I don't care what my enemies may say; I don't care what the correspondents may write down to the San Francisco papers, I shall stand up here like a man and express my views. I shall oppose this Commission scheme, unless the Legislature is given power over them.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I promised the Convention that unless something occurred to make it necessary I would not address it again. Now, sir, before I came to this Convention I was solicited by the agent of the railroad companies to support this Commission clause. I declined. That the railroad at that time wanted this Commission I have no reason to doubt. I have no doubt that they can aid them in doing their work. You will recollect, sir, that after this Commission bill had passed this body, the Sandlot changed front, and from being opposed to it were in favor of it. And it is well known that the king of the Sandlot and the moneyed head of the State, Leland Stanford, had been talking together upon this subject. I do not know what connection there is between this and the vote, but if there is any devil's work in it, you can look in that direction for it. Gentlemen who are working for this Commission are going to do the railroad companies a great service. Those who are howling the loudest for this thing are doing the railroad work the best. Go on and get your Commission. You have left the Legislature to provide the machinery for this Board. Mr. Campbell wanted to give them the machinery of the Courts, so that Sheriffs would

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obey their orders. You voted that down. I voted against it because he refused to put in a proviso that these Commissioners should hear both sides. It was an eminently wise provision, and should have been adopted. How are you going to get along? What Court is going to issue them process? How is that process to be procured? Under what circumstances? I want you to tell me how it is to be done. There is not a man among you who can open his mouth and tell me. The Supreme Court has no jurisdiction originally. It is an appellate Court. The Superior Court must have jurisdiction beyond three hundred dollars. There may not be a cent involved. Without the provision which Judge Campbell offered you can do nothing. You say they are to hear and determine complaints against the railroad companies. It ought to be by and against the railroads. You have no officers to enforce your decrees. That is all left to the Legislature, and if the Legislature refuses to give you these officers, what are you going to do about it? How are you going to execute your orders? How are you going to enforce them? Of course Governor Stanford will control the Legislature. Of course he will. And he will control two out of three of these Commissioners, and you know it and I know it. I simply call your attention to these defects in this article, so that you may remedy them and make it effective if you want to. The learned gentlemen of the law ought to see to it, because their reputations are involved.

MR. ESTEE. If this amendment of Judge Campbell's was such a good amendment, how is it that you did not favor it?

MR. SHAFTER. Because he refused to put in an amendment that I wanted. I did not say it was perfect. It was good as far as it went, but it did not provide that the Commissioners might hear complaints in favor of the corporations, as well as against them.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I have no idea that we can amend this provision, or that we will do it, so that it will suit the gentleman from Marin. I would sooner undertake to provide a scheme of this sort that would suit the President of the Central Pacific Railroad Company himself, and certainly I should much prefer, and wish, that Leland Stanford himself should occupy a seat on this floor to some of the gentlemen he has sent here.

MR. SHAFTER. I beg to say that if the gentleman refers to me, it is a falsehood. I was nominated without the knowledge, or consent, and without my concurrence.

MR. REYNOLDS. 'Whose withers are wrung let him wince. The gentleman from Los Angeles this morning read from the Quarterly Review to show that this scheme has worked well in England. If gentlemen will look into the matter, they will find that this scheme, in many respects, is identical with that of England. There it has worked well, and has served to reconcile the railroads and the people. The universal experience has been that it is impossible for the Legislature to cope with the question. Now one section of the last bill in England is particularly applicable. It says that "any decision of the Commissioners under this section shall be binding in all Courts, and in all legal proceedings whatsoever." This Commission is made the Court of first instance, from which there is no appeal. It is the Court of first instance, and the Court of last resort at the same time. Its decisions are binding on all Courts, and it is in reference to that section that Mr. Adams remarks, that the power given to that Commission by that section has almost done away with the necessity for a Commission. The very fact that there is power in this Commission to decide these questions as they arise, renders it unnecessary for them ever to decide them. The railroad companies do not care to provoke the power of that Commission. They do not care to force a decision from that Commission. Why? Because they have reason to believe it would be just, and from it there is no appeal. Why, by that section the whole power of the kingdom is centered upon the railroad company, and from it there is no appeal. It is subject to appeal, it is true, but the whole power is given to them for the time being.

Now, the result of the amendment sought to be introduced here will be to leave the matter right where it is now. If any citizen of this State feels himself aggrieved at any charges or abuses whatever, he must go to law, with the sides so unequally balanced as between a single individual upon one side and the Central Pacific Railroad upon the other. That is the result of the amendment sought to be introduced here. I do not need to refer gentlemen of this Convention to the unequally balanced sides. Now, I do not expect or hope that we can amend this section so that it will suit the gentlemen who oppose it. I have no hope of that at all. But I do hope that in determining upon the amendments offered here, and in determining upon the final passage of this section, that we shall take into consideration the experience of the English Parliament upon this subject, and what Mr. Adams has said in reference to their action, that the very fact of having such a Commission has done away almost with the necessity of remedial measures. That is the effect of the statute there, and it will be the effect of this provision here. We are not without experience in our own country—in the Western States. They have had experience with Commissions without power, and they have brought little or no relief. This Commission must have power or it will avail us nothing.

[At this point the gavel fell.]

SPEECH OF MR. JOYCE.

MR. JOYCE. Mr. President: In a few moments I expect to be called upon to cast my vote upon a proposition I don't believe has any precedent in history. It is a body entirely above the laws, and it is dangerous. Every State in the Union is subject to the laws of the Legislature. But, sir, I fear we are creating a body so powerful that it will be beyond all laws. It is a very easy matter to say that two thirds of the Legislature may impeach any member of this Commission. But I do not believe it can ever be done. How are you going to impeach them? Here is a Commission above the law, and how are you going to impeach them? That is the question as it appears to me. Now, sir, the gentleman from Los Angeles has read a letter here from the State of Wisconsin, showing that in that State there is no difficulty between the Commissioners and the railroads. That is a Commission created by the Legislature, and subject to the legislative power. And if that Commission worked well in Wisconsin, why should we try the experiment in the Constitution? Let these gentlemen stand upon this floor and say that the Constitution is the place to try experiments. In two years from now we don't expect to have another Convention meet in this State. It will be a woful experiment. If my party told me to vote for a Commission I would do it, because I consider their judgment superior to mine. But my platform is silent on that proposition. What is the Legislature to do? Here is one of the most formidable powers on the face of the globe to-day, that wields the destinies of millions of dollars, and you are going to bind the hands of the Legislature and say that they shall not open their mouths. There is the law-making power of the State, and you propose to bind their hands completely. Now, sir, the next question is, would it not be easy for the railroad company to control this Commission? Would it not be easier for them to buy one third of the Legislature than to buy a majority? By buying one third of the Legislature they can prevent the Commissioners from being impeached. If you are going to govern the State by absolute Commissions, why not extend it to all departments. I am not opposed to Commissions, but I want them to be subject to the will of the people, and not above it.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: The controlling idea of the Committee on Corporations, in proposing a commission, may as well be stated again. Briefly it is this: The regulation of fares and freights could not be accomplished by any general law. There you have it in a nutshell. The universal experience of all Legislatures of all States attempting to deal with this subject is, that regulation cannot be accomplished by general law. That fact was realized, and the idea of a permanent Commission was adopted; a constitutional Commission, to do all that could not be done by general law. The gentleman from Santa Clara proposes to provide for a Commission subject to the control of the Legislature, with a maximum rate fixed. I deny that it would be fair and just to the railroad company. What would be a fair rate for this part of the State, where the bulk of the business is done, would be no rate at all for the rest of the State, consequently it is all a matter of regulation. It must be flexible; it must be determined by the business, by the trade, by the state of the market, by the demand; everything tends to change and fluctuate. Now, the gentlemen who are contending for legislative control lose sight of two propositions which inevitably follow. One of them is, that to say that it shall be under legislative control, is exactly equivalent to saying the Legislature shall regulate—can any gentleman point out the difference? Secondly, if the rates fixed are to be revised by the Legislature, it is better to leave it to the Legislature at once. And again, the members of this Commission are just as near to the people as the Legislature, and why do they want to draw this distinction? This section goes on the presumption that honest officials can be found. If the argument is good against giving this power to these Commissioners, it is equally good against giving such power to the Governor, to the Judges, and other officers. You place the property of the citizen in the hands of the Judges; why do you do it, and that without any financial security? You must trust to the honor and integrity of men. It is an utter impossibility to regulate freights and fares by general law. That was the conclusion of the Committee on Corporations, that it could not be done by general law; that it must be done by men elected for the purpose, who would make their calculations on what would be a fair return on the capital invested.

Another reason is this: that the people will have these officers, to whom they make their complaints. We want officers who can take hold of these abuses wherever and whenever found. All these things we took into consideration when considering this provision. We understand what we are doing here. We are not working into the hands of the railroads. The gentleman from Marin tells us he was solicited by the agent of the railroad company to come here and advocate this measure. I suppose, if he had told the whole of it, it would have been further, that he should come and tell us that such a request had been made of him. I would like to have the balance of the members who have been solicited to tell us who solicited them, and give us a few facts and figures. If we are going to regulate our conduct by the action of the railroad company—going against what they favor, and favoring what they go against—it is well that we should know it. I care not what may be their opinion about it; if it commends itself to my judgment, I shall give it my support. That is all there is about that. There ought to be no such motives in the minds of men. I am certain that the members of this Convention cannot be driven about by tales of that kind which are brought in here. They must handle the thing upon its merits, and if it is sufficient as a remedy, then give it their support. Now, the proposition of the gentleman from Sacramento, Mr. McFarland, is a better proposition than that of the gentleman from Santa Clara, Mr. Laine. It brings us to a direct issue upon the question. To move to strike out the whole would amount to the same thing. Either we want to know whether we are in favor of a Commission at all, and then whether we are in favor of a Commission with power to regulate freights and fares and correct abuses. That is all there is about it. If we are to have them controlled by the Legislature, I would be opposed to inflicting such a permanent tribunal upon the people. I would prefer to leave the whole subject to the Legislature at once. That would be consistent. I don't want a Commission of mud; of straw. We want a Commission with some power to compel obedience to its mandates; otherwise we want none at all.

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REMARKS OF MR. CHAPMAN.

MR. CHAPMAN. Mr. President: I fail to see anything in this as a business proposition; therefore I want to go upon the record as opposed to this scheme, and I shall vote against it. In doing so, I will say this: that I believe freights and fares can be regulated by a Commission; but it is like buying stocks—you may get a good one, and you may not; therefore I want to put myself on record against it.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: If I am forced to vote for or against this section, as it now stands, I shall have to vote for it. But I do so with extreme reluctance, because I believe that it is so imperfect that it is doubtful whether it can be carried into full operation. So far as the mode of appointing the Commission is concerned, I differ with the majority as to the mode of appointing and the tenure of office. In that I was overruled. I have nothing further to say upon that branch of the subject. But in looking at the machinery by which we propose to carry out the scheme, the more I look at it the more imperfect I find it, and I do hope that the friends of this measure will rerefer this section to the Committee on Corporations, for revision.

Now, allow me to point out a few of the difficulties which will arise under the section as it now stands. Judge Shafter referred to the difficulty about having the process of the Courts. I endeavored to have that remedied, to enable the Commission to issue subpœnas, and to punish in the same way as Courts do, a failure to obey its orders. In looking over it I see some things in it which did not strike me at first, which have not been mentioned upon this floor, and which are of vital importance towards the execution of this scheme. After saying that it shall have process of the Courts, it goes on: "To hear and determine complaints against railroad and other transportation companies, to send for persons and papers, administer oaths and take testimony, to punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts." Now, how will the Courts interpret that? Now, if that be one sentence, are they to hear and determine complaints against railroad and other transportation companies in the same manner and to the same extent as Courts of record? If so, then they must have all the machinery of Courts of record. They must issue their summons, publish their complaints, and file them, and proceed to a regular trial, as in other cases, and then the parties will be entitled to a jury trial before the Commissioners. Now, I had supposed the object of this plan was to invest the Commission with full power to hear and determine complaints. But if that is the intention, it is so bunglingly expressed that it is liable to misconstruction, and especially in a case where such vast powers are vested.

Another thing: as it stands now, it is to hear and determine complaints against railroad and other transportation companies. Complaints for what? There is no limit to it. It is not limited to complaints relating to the transportation of freight and passengers, or for the non-execution of any particular contract, for instance. Then you say: "To enforce their decisions, send for papers, etc., to the same extent as Courts of record." After giving them all this power, still you say that they have to exercise this power and enforce their decisions through the medium of the Courts.

THE PRESIDENT. The gentleman will confine himself to the amendment before the Convention.

MR. CAMPBELL. As far as the amendment is concerned, I am opposed to it. I hope that some of the friends of this measure will move to have it referred to some committee for revision.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: Personally, I have no enmity towards the railroad, or any other corporation in this State. But, as between the people of the State of California and the railroad companies, I am for the people all the time. Therefore I shall support the section as reported by the Committee of the Whole, fully believing that there are plenty of honest men in this State from among whom three good and proper men for the place can be chosen. If I did not do all in my power to correct these abuses my constituency would call me to account for not having done so. Therefore I am very sorry to see some of the Workingman's delegates upon this floor fall down on their knees, after having voted for this Commission in Committee of the Whole.

REMARKS OF MR. WILSON.

MR. WILSON, of Tehama. Mr. President: I am for the section as it stands. What seems to be the matter is that this railroad company has constituted itself the law, the Judge, and the jury, and whenever the people begin to want to be the law, the Judge, and the jury, then the cry is raised that we are trying to destroy corporations. We gave these lands to the railroad people. We gave them the money to build this road, and they have been putting on airs ever since. Now, we claim the right to have something to say about it, with regard to freights and fares. Whenever the railroad gets above the authority of the people, then it ought to be proclaimed a nuisance and abated.

SPEECH OF MR. WHITE.

MR. WHITE. Mr. President: I desire to say one word. The gentleman used a very ingenious argument, though I am surprised that he should use so shallow a one, that the railroad wanted this Commission. The gentleman from Marin said they solicited him to go for it. I am sorry he said it, because it is impossible to believe it, and I am sorry the gentleman from Santa Clara ever made use of the argument. This Convention has been denounced by the subsidized press all over the State for passing this Commission bill. We have been vilified upon this floor, and denounced for the Constitution we are making. We are trying to inaugurate the reforms which the people have demanded. There was a desperate effort made to defeat the calling of this Convention, and then to cripple it. The same people are trying to defeat our work here. We promised the people we would reform taxation, and we have done that. Then we proposed to curb the railroad, and that they do not want, and they come here and tell us we are doing the work of the railroad, and a gentleman of character and standing in the community comes forward and says we are doing Leland Stanford's work. I tell you, if we stand by our guns, this will be the greatest victory the people have ever won over aggregated wealth, and over the moneyed power of the country. I again appeal to the men who are for the people to stand by their guns.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. President: The reason I was in favor of a Commission, as a member of the Committee on Corporations, was that I realized that it was utterly impossible for the Legislature to fix rates of freights and fares for the very reason that the very first principle in these rates is that they must be reasonable and just. This question of fact is always involved, and always will be, in fixing rates—are those rates reasonable, and just, and fair, as against the railroad company as well as against the people? Now, even our Commissioners, when they act, must act with reference to that fact. Are the rates just and reasonable? We can declare that the rates so fixed shall be deemed just and reasonable; but, sir, if we fix the rates at three cents per mile, here arises the question, is that a reasonable rate? If it is not it is bound to work a hardship either to the companies or to the people. There is nothing flexible about it. It is a freight and fare bill in the Constitution, which cannot be altered as the case demands. Now, that ought to be an open fact, and the Commissioners have power to decide that fact. I am, therefore, in favor of a Commission. I do not like this section reported by the Committee of the Whole. I am in favor of the original section reported by the Committee on Corporations. It is short, direct, and to the point. I hope the Convention will vote this down and adopt the original section.

REMARKS OF MR. GRACE.

Mr. GRACE. Mr. President: I had thought it would be unnecessary for me to speak upon this question. Perhaps the Convention think so still. There has been a great deal of talk about going on the record, and I too propose to go upon the record. I intend to favor the section as it is, though it is not yet perfect, not exactly what I want. There are some things in the amendment of Judge Campbell I would like. I believe these Commissioners should ride over the railroads free of charge. I am sorry to see one of the members from the sand lot, Mr. Joyce, has fallen down. When I see a disposition on the part of men to go back on the very principles they were pledged to represent and support, I cannot help but feel sorry. It is the duty of every working man in this State, of every producing man, and every business man, to stand squarely up and toe the mark on this question. I know the people of these corporations, and I want this section amended until it is perfect. If these people can get a loop-hole made in it they will drive a cart through.

MR. JOYCE. Mr. President: I rise to make a personal explanation. I wish to inform the gentleman's ignorance, that as far as I am concerned, I have been opposed to this Commission all the time. All my colleagues know that I have been against a Commission.

MR. O'SULLIVAN. Didn't you vote for it in the Committee of the Whole?

MR. JOYCE. I voted for it as I shall to-day, for a Commission with limited powers and some modifications.

MR. WELLIN. I will say that Mr. Joyce never did favor a Commission.

MR. GORMAN. Mr. Joyce never did favor this Commission. I wish to correct the mistake. He was elected from the same district as myself, and he never favored the proposition. I am in favor of a Commission, though I would rather accomplish the object in some other way, but I can see no other possible way to do it. It must be a permanent body in order to do any good. The Legislature will sit but sixty days every two years, and they cannot possibly act intelligently in regulating freights and fares. I must support this bill, because I see no other way.

MR. GRACE. It seems they are trying to misrepresent what I said. I said I believed he had fallen down. I had not been personally acquainted with him. I had never learned that he was against it. I did not charge that he was, but I believed so, and I still believe so. [Laughter.]

MR. JONES. Mr. President: I rise to a point of order, in regard to the rights of Mr. Joyce—that he who stands up for what is right has not fallen down at any time.

THE PRESIDENT. The question is upon the amendment of the gentleman from Sacramento, Mr. McFarland.

MR. GORMAN. Ayes and noes.

MR. RINGGOLD. Mr. President: I beg leave to say three or four words. I am here to represent the people of San Francisco, and I shall endeavor to do so, and to do my duty as I understand it. I shall vote in favor of section twenty-two. I do not think that it is entirely correct. One reason is that it takes a two-thirds vote of all the members elected to the Legislature to remove them. In my opinion it places the Commissioners too far from the people, in case a Commission is created. For that reason I do not like that portion of it. But if we cannot get anything better I shall vote for it, for the reason that I do not believe the Legislature has time to regulate fares and freights. Every man has a right to vote as he thinks right, and any man has as much right to vote against this as I have for it.

THE PRESIDENT. The question is upon the adoption of the amendment of the gentleman from Sacramento, Mr. McFarland. The Secretary will read the amendment.

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THE SECRETARY read:

"Strike out all after line ten and insert, 'to inquire into abuses by railroad corporations and other transportation companies, and report the same, annually, to the Governor; and to exercise such further powers over such corporations and companies as shall be conferred upon them by the Legislature. The Legislature shall provide for the enforcement of the powers hereby given said Commissioners, and for the enforcement of such other powers as shall be hereafter conferred on them by law.'"

The ayes and noes were demanded by Messrs. Gorman, White, Heiskell, Farrell, and Wellin.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Lewis,	Thompson,
Crouch,	Martin, of Santa Cruz,	Townsend,
Harvey,	McFarland,	Wilson, of 1st Dist.—11.
Hitchcock,	Schomp,	

NOES.

Andrews,	Heiskell,	Prouty,
Ayers,	Holmes,	Reddy,
Barbour,	Howard, of Los Angeles,	Reed,
Barry,	Howard, of Mariposa,	Reynolds,
Barton,	Huestis,	Rhodes,
Beerstecher,	Hughey,	Ringgold,
Bell,	Hunter,	Schell,
Biggs,	Inman,	Shurtleff,
Blackmer,	Johnson,	Smith, of Santa Clara,
Boucher,	Jones,	Smith, of 4th District,
Brown,	Joyce,	Smith, of San Francisco,
Burt,	Kelley,	Soule,
Campbell,	Kenny,	Steele,
Caples,	Keyes,	Stevenson,
Chapman,	Kleine,	Stuart,
Charles,	Laine,	Sweasey,
Condon,	Lampson,	Swenson,
Cross,	Larkin,	Swing,
Davis,	Larue,	Tinnin,
Dean,	Lavigne,	Turner,
Dowling,	Lindow,	Tuttle,
Doyle,	Mansfield,	Vacquerel,
Dunlap,	McComas,	Van Dyke,
Estee,	McConnell,	Van Voorhies,
Estey,	McCoy,	Walker, of Marin,
Evey,	McNutt,	Walker, of Tuolumne,
Farrell,	Miller,	Waters,
Filcher,	Mills,	Webster,
Freud,	Moffat,	Wellin,
Garvey,	Moreland,	West,
Glascock,	Morse,	Wickes,
Gorman,	Murphy,	White,
Grace,	Nason,	Wilson, of Tehama,
Gregg,	Nelson,	Winans,
Hager,	Neunaber,	Wyatt,
Hale,	Ohleyer,	Mr. President—110.
Harrison,	O'Sullivan,	

MR. LAINE. Mr. President: I offer an amendment to the section.

THE SECRETARY read:

"Amend by striking out all after the words 'section twenty-two,' of the report of the Committee of the Whole, and insert the following, viz: 'The Legislature shall pass laws to correct abuses and prevent unjust discriminations in the rates of freight and passenger tariffs on the different railroads in this State, and shall, from time to time, pass laws establishing maximum rates for the transportation of passengers and freight on said railroads; *provided*, that said maximum rates shall not exceed three cents per mile for passenger rates, nor three cents per ton per mile for freight, which maximum rates are hereby fixed and established until the same shall be lowered by the Legislature.'"

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Santa Clara, Mr. Laine.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I wish to say a word on that amendment. I know, sir, that the gentleman from Santa Clara is entirely honest and sincere in this matter. I think he offers this amendment in the utmost good faith. I have to object to it in the first place, because it takes the whole thing away from the Commission and submits it to the Legislature, which is practically submitting it to the lobby. Then, sir, he provides for placing the maximum for freights at three cents per ton per mile. Now, Commissioner Tuttle testified before the committee that the present average rates of the Central Pacific was two cents and one hundred and seventy-seven thousandths, and therefore this would be merely an invitation to the railroad company to raise its rates. Again, it applies to all roads in the State, and short roads could not be operated at any such rates. Therefore I regard the provision as entirely impracticable. Those are my reasons for opposing the amendment. I do not question the sincerity or the honesty of any man who votes for it; I merely say it does not conform to my views of what is proper.

Now, the statement has been made here by the gentleman from Marin, and I am sorry that he is not in his seat. He tells you that the President of the Central Pacific is for this Commission. Now, sir, I am informed from a source which I entirely believe, which I know to be one of integrity—who might be mistaken, but who would not make any intentional mistake—that at first the President did favor a Commission. But after the report was made he sent it to his associates in New York, and they wrote back instructions that it should be opposed and defeated at all hazards, and upon that followed the letter of Leland Stanford attacking the report of the committee. That is the history of that thing. That is the whole of it. And, therefore it is I say that the President and his company have been fighting this Commission all the time. He also stated that there had been a conversation between the king of the Sandlots and Leland Stanford on this subject, and that thereafter the Sandlot changed front on the subject. Now, sir, that may be true, and it may not be true. The statement of the gentleman is the first evidence of its truth that I have ever heard. Now, sir, I have this to say, that the course of the Workingmen upon this floor upon this subject has raised them in my estimation, and I have a much higher opinion of them than I had when I came to this Convention. I believe they are sincere and honest. I know, sir, that a certain dark sheet in this town has been whispering in the ears of members of this Convention, as the serpent, in the Garden of Eden, whispered in the ear of Eve. The members have been invited to dinner and wine at an open place of entertainment, and I am surprised that so few have yielded to corrupt influences. Gentlemen, for one, when it comes to an election, I shall vote for a candidate for Governor without reference to party, if he is only sound and to be trusted in this matter. [Applause.]

THE PRESIDENT. The question is upon the amendment of the gentleman from Santa Clara, Mr. Laine.

Lost.

MR. BIGGS. Ayes and noes.

MR. HOWARD, of Los Angeles. Ayes and noes.

MR. WELLIN. Ayes and noes.

MR. HUESTIS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by inserting between the word 'incompetency' and the word 'and,' in forty-sixth line, the following: 'and whenever the Legislature shall, as herein provided, remove from office any one or more of said Commissioners, it may also, by a two-thirds vote, modify or set aside such act or acts constituting the cause of such removal.'"

SPEECH OF MR. HUESTIS.

MR. HUESTIS. Mr. President: Now, sir, this amendment is in substance the one I offered in Committee of the Whole, and being at a late hour, the Convention was tired. It received considerable support, though it was defeated. In offering this amendment, I want it distinctly understood that I favor the theory of a Commission. I am impliedly pledged to that idea. But I am also opposed to the idea advanced by Judge Campbell, that this report should be recommitted to the committee. We have got to meet this issue, and I am for meeting the issue squarely. But at the same time I implore the friends of this section to give it full and ample consideration, and to allow it to be amended and perfected as far as possible before we come to a final vote upon it. Now, sir, the Committee of the Whole, by their report, have recognized the principle of Legislative supervision by providing that the Legislature shall have power, by a two-thirds vote of all the members elected to both houses, to remove any one or more of said Commissioners. Now the amendment I propose is simply this, and it seems to me to be not at all antagonistic to the general theory of the section, that the same Legislature, or any subsequent Legislature, may, by the same vote, modify or set aside the act or acts of said Commissioners constituting the cause of removal. I submit to the gentlemen of this Convention, that this is perfectly right and fair. I submit further, that it will remove a great stumbling block in the way of the adoption of this Constitution. That is one of the greatest objections urged, that you are empowering three men with legislative, executive, and judicial functions, who are not responsible or subordinate to any branch of government. I will here state that I will vote for this section as it now stands, provided I cannot secure the amendments which I deem necessary. But I would like to see some of the defects rubbed out, and the section perfected. No man can question my standing upon this proposition, for votes speak louder than words.

MR. BIGGS. I rise to inquire whether the minority have any rights upon this floor to put themselves on record on this thing? If we have, the previous question was asked for by the requisite number. The ayes and noes were asked for. The Chair didn't recognize either Mr. Laine or myself.

THE PRESIDENT. The decision was announced before any one called for the ayes and noes.

MR. BIGGS. I would like to state the circumstances——

THE PRESIDENT. The matter is not before the Convention.

MR. BIGGS. Then I understand that the minority cannot place themselves on record; is that the ruling?

THE PRESIDENT. You don't understand any such thing.

MR. LAINE. I am satisfied the Chair is mistaken. The demand was made before the vote was ever taken, by the requisite number standing up. I appeal to the Convention as to the truth of that.

MR. HOWARD, of Los Angeles. Mr. President: Will not the vote be upon the amendment of the gentleman from Santa Clara? Are not the ayes and noes called for now?

THE PRESIDENT. The thing has been voted down, the result is announced, and it is not before the Convention. The question is upon the adoption of the amendment proposed by the gentleman from Humboldt, Mr. Huestis.

MR. HUESTIS. Ayes and noes. [No second.]

The amendment was lost.

MR. JONES. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section twenty-two by striking out all after the word 'Commission,' in lines nine and ten, and add as follows: 'Said Commissioners shall have the power, and it shall be their duty, to revise the rates and charges for the transportation of passengers and freight by railroad and

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other transportation companies, as fixed by such companies; and, whenever they shall deem it necessary or just, to provisionally alter such rates and charges, and to establish just rates and charges for such transportation, and to publish the same from time to time, subject however to the revision and alteration of each successive Legislature. They shall also have power, and it shall be their duty, to collect all available statistics and information that may serve as a reasonable basis for their own action in the performance of their duties, and for the action of the Legislature in the regulation and control of such corporations, and in the regulation of freights and fares for the transportation of freights and passengers by such transportation companies. Said Commissioners shall at least biennially, and at least six months before the regular biennial meeting of the Legislature, file in the office of the Secretary of State a compiled and digested report of their proceedings, and of all the useful statistics and information collected by them in pursuance of their duties, together with their recommendations, for the information of the people and of the Legislature of the State. For the purpose of the performance of their duties, said Commissioners, and each of them, shall have the right to examine the books, records, and papers of all railroad and other transportation companies, and they shall have the process of the Superior Court of the county in which such books, records, and papers may be, to enforce such right; and shall have the right and power to send for persons and papers, to administer oaths, and take testimony; and any witness who shall willfully swear or affirm falsely to any material matter before said Commissioners, or any of them, shall be guilty of the crime of perjury; and any witness who shall, when duly cited to appear and testify before said Commissioners, willfully refuse or neglect to so appear and testify, shall be guilty of contempt, and shall be punished therefor, upon proper complaint and notice by a Superior Court, as in cases of contempt of such Court. Any officer of any railroad or other transportation company, and any person having the care, custody, or control of the books, records, papers, or documents of any such company, who shall refuse any of said Commissioners access thereto, when at any reasonable time requested, shall be guilty of a misdemeanor, and shall be punished therefor as may be prescribed by law; and any officer, agent, servant, or employé of any such company who shall demand or receive any greater rate or charge for the transportation of freight or passengers than the rate or charge provisionally established by said Commissioners, or as regulated by the Legislature, shall be guilty of a misdemeanor, and punished therefor as may be provided by law. In any action against any railroad or other transportation company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may impose other and additional duties, and confer further powers upon such Commissioners; and shall provide for the printing and public distribution of the reports of said Commissioners, prior to each election of members of the Legislature.'"

SPEECH OF MR. JONES.

MR. JONES. Mr. President: I know when the Convention are as tired as they are now they would much rather talk of something else besides railroads. I understand, as most members do, that amid all the noise and confusion it is impossible to understand what an amendment is by simply hearing it read at the desk, and under these circumstances, I beg leave to explain the amendment which I offer. Now, sir, in the first place, I would like to say that I hope the vote on this may not be reached until after the adjournment of this Convention; until you can have a chance to see what it is, and whether the section is worth amending at all; and even if it is not worth amending, there may be something else that is worth considering, distinctive from the report of the Committee of the Whole as amended. I am satisfied, in the first place, that substantial control over the transportation companies of this State can be exercised by the Legislature of this State without the aid of a Commission. It seems to me that does not require any argument; and the question before this body has been, whether, first, shall we have a Commission; and second, shall it be merely an Advisory Commission, or shall it be a Commission with final powers? Now, sir, I hold that a Commission without some power is an utterly useless thing. I have no recommendations to make in regard to a Commission of that kind, but a Commission supplied with power to obtain full and accurate statistical and other information upon which any legislative body might reasonably act within the limited time of their session. They could take the recommendations of the Commission for what they are worth. I would be satisfied with such a Commission as we have at the present time, but I recognize the fact that the demand is made by men of high character, and by a considerable amount of public opinion, for a Commission with further powers. I have, therefore, distinctly and deferentially proposed to this Convention the idea of a Commission armed with power to acquire the necessary information upon which a legislative body might reasonably act. I have also provided that "said Commissioners shall have the power, and it shall be their duty, to revise the rates and charges for the transportation of passengers and freight by railroad and other transportation companies, as fixed by such companies; and, whenever they shall deem it necessary or just, to provisionally alter such rates and charges, and to establish just rates and charges for such transportation, and to publish the same from time to time, subject, however, to the revision and alteration of each successive Legislature. They shall also have power, and it shall be their duty, to collect all available statistics and information that may serve as a reasonable basis for their own action in the performance of their duties, and for the action of the Legislature, in the regulation and control of such corporations, and in the regulation of freights and fares for the transportation of freights and passengers by such transportation companies. Said Commissioners shall, at least biennially, and at least six months before the regular biennial meeting of the Legislature, file, in the office of the Secretary of State, a compiled and digested report of their proceedings, and of all the useful statistics and information collected by them in pursuance of their duties, together with their recommendations, for the information of the people and of the Legislature of the State." I confess I do not know whether it is necessary or not to make this provision, as it will be only about a year and nine months in which they will have the exercise of this power, but I am willing to make this concession. I will read the remainder of it:

"For the purpose of the performance of their duties said Commissioners, and each of them, shall have the right to examine the books, records, and papers of all railroad and other transportation companies, and they shall have the process of the Superior Court of the county in which such books, records, and papers may be, to enforce such right; and shall have the right and power to send for persons and papers, to administer oaths, and take testimony; and any witness who shall willfully swear or affirm falsely to any material matter before said Commissioners, or any of them, shall be guilty of the crime of perjury; and any witness who shall, when duly cited to appear and testify before said Commissioners, willfully refuse or neglect to so appear and testify, shall be guilty of contempt, and shall be punished therefor, upon proper complaint and notice by a Superior Court, as in cases of contempt of such Court. Any officer of any railroad or other transportation company, and any person having the care, custody, or control of the books, records, papers, or documents of any such company, who shall refuse any of said Commissioners access thereto, when at any reasonable time requested, shall be guilty of a misdemeanor, and shall be punished therefor as may be prescribed by law; and any officer, agent, servant, or employé of any such company who shall demand or receive any greater rate or charge for the transportation of freight or passengers than the rate or charge provisionally established by said Commissioners, or as regulated by the Legislature, shall be guilty of misdemeanor and punished therefor as may be provided by law. In any action against any railroad or other transportation company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may impose other and additional duties, and confer further powers upon such Commissioners, and shall provide for the printing and public distribution of the reports of said Commissioners, prior to each election of members of the Legislature."

Now, I respectfully submit this proposition, and hope that it will be given due and careful consideration.

MR. MURPHY. I move the previous question.

Seconded by Messrs. Reddy, Mansfield, Tinnin, and Hunter.

THE PRESIDENT. The question is: Shall the main question be now put?

Division was called for, and the Convention refused to order the main question, ayes 47, noes 48.

MR. BIGGS. I wish to give notice——

THE PRESIDENT. It is not in order.

MR. BIGGS. There was a rule made that notices to reconsider must be sent up in writing.

THE PRESIDENT. Not in order. The question is upon the amendment offered by the gentleman from Mariposa, Judge Jones.

Lost—ayes, 1. [Laughter.]

MR. PROUTY. I offer an amendment.

THE SECRETARY read:

"Amend by inserting after the word 'House,' in line forty-four, 'to either change the action of, or.'"

MR. PROUTY. Mr. President: It occurs to me that we ought to be very careful, and not place the power that is now in the hands of the people entirely beyond the reach of the people. We propose here that the Legislature shall have power over them by a two-thirds vote, to remove any one or more of them. Now, it seems to me, if you confide in the Legislature the power to remove the agents that you place here to do the business of the people, that we ought to give them power to change any harm that may have been committed by the Commission. We can simply remove them, as it stands now, while the wrong they may do remains.

THE PRESIDENT. The question is upon the adoption of the amendment.

Lost.

MR. ESTEE. Mr. President: I call for the previous question.

Seconded by Messrs. Howard, West, Evey, White, and Inman.

MR. LAINE. Does this bring us to a vote upon the whole article.

THE PRESIDENT. Yes, sir. First upon the amendments, and then the question comes upon the engrossment of the article.

MR. ESTEE. If there is any amendment I will withdraw it. It strikes me that the subject must be exhausted.

THE PRESIDENT. The question is: Shall the main question be now put?

Division was called for, and the Convention refused to order the main question, by a vote of 51 ayes to 56 noes.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: There is no amendment pending now. The question is now upon the report of the Committee of the Whole. I wish to make a few remarks. I believe, from the beginning to the end of this debate, I have been in favor of the appointment of Commissioners. When it was before the Committee of the Whole I defended the measure with all my weight and power. My effort has been to obtain a Commission in the Constitution. Now, while I favor this provision, I would like to see that it is put in some efficient shape, so that it can be operated. And when we are called upon to stand to our guns, that is well enough in battle. It is well enough when you are contending for a principle, and the principle here is that such a Commission should be established. If that is what you mean, then I stand by my guns. But if it means to stand by the document as it is, whether it be

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right or wrong; whether it be efficient or not; whether it is a worthless piece of paper, or something that will give that result which this people desire—relief from oppression; if it be that it must be forced upon us, right or wrong, I don't stand by my gun. On the contrary, I will turn my back and leave it in the ditch. Now, sir, I want this thing—whatever it may be—perfect, so that it will operate. It is not a perfect thing now, and no man of intelligence, let him be a friend to this measure or an enemy, could conscientiously say that this is a perfect measure. Every friend of the measure ought to be willing to see it improved. Why not, as reasonable men, reason together, and ascertain whether we can improve it or not? Whether we can make it more perfect? Now, this is imperfect, because it will not work out. I have here an amendment, which I will allude to briefly, which I think will improve it. It says:

"Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts."

Now comes the penal clause: "Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail, or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined," etc.

How are you to fine them, and how are you to enforce the rates of fares and freight. This does not give them power to do it. It says they may punish and fine. You must go to the Legislature and get laws passed by which you can get them indicted. Some of these things sound very well, but they are utterly useless and worthless without the necessary machinery. I have not time now to explain it fully, so I will send up my substitute and have the Secretary read it.

THE SECRETARY read:

"Strike out amendment of committee and insert the following:

'SEC. 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors of their respective districts, at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have free passage on all railroads, and they shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and by common carriers on railroads, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all such common carriers, railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints by and against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their rates of charges as established, and their decisions, and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable. Any party aggrieved may have a right of action against such corporation, company, or carrier for damages sustained by charging excessive rates, and in addition to the actual damage, may, in the discretion of the Judge, or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from otherwise maintaining actions against any of such companies or carriers. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of franchise and charter, or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform their duties. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever from any cause a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the unexpired term."

MR. TINNIN. I am satisfied there is merit in the proposition submitted by the gentleman, and it should receive due and careful consideration. I move, therefore, that section twenty-two be temporarily passed, and that this be printed in the Journal and made the special order for to-morrow morning, at ten o'clock.

MR. BROWN. I second the motion.

MR. SCHELL. I move it be printed in the Journal.

MR. HALE. I have examined the substitute, and I believe it will meet with the approval of the Convention. I hope it may be adopted. I hope, however, that it will be printed in the Journal, so that members can see what it is. I have an amendment, also, which I wish to have printed in the Journal, and to-morrow morning the Convention will be able to judge of this matter.

THE PRESIDENT. Your amendment is not in order.

MR. HALE. I only ask leave to have it printed in the Journal.

MR. AYERS. I move we pass section twenty-two.

MR. HALE. Is it in order to ask to have it printed?

THE PRESIDENT. Not at present. If there is no objection these amendments will be ordered printed in the Journal.

The following is the proposed amendment of Mr. Hale, ordered printed in the Journal.

"Amend section twenty-two, as reported from the Committee of the Whole, by striking out all after the word 'Commission,' where it occurs in ninth and tenth lines, down to and including the word 'Courts,' where it occurs in twentieth line, and substitute the following: 'Said Commissioners shall have free passage on all railroads, and they shall have the power, and it shall be their duty, to establish rates and charges for the transportation of passengers and freights by all railroads or other transportation companies and carriers on railroads, and publish the same, from time to time, with such changes as they may make; to examine the books, records, and papers of such carriers and railroad and other transportation companies; to hear and determine complaints by and against such carriers, railroad, and other transportation companies; to send for persons and papers, to administer oaths, take testimony, and correct abuses, and, through the medium of the Courts, enforce their orders and decisions, including the said rates of charges as established by them, and shall, therefor, have process of the Courts.'"

ADJOURNMENT.

MR. HOWARD, of Los Angeles. Mr. President: I move we do now adjourn.

Carried, and at four o'clock and thirty minutes P. M. the Convention stood adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND TWENTY-SEVENTH DAY.

SACRAMENTO, Saturday, February 1st, 1879.

The Convention met pursuant to adjournment at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Heiskell,	Reed,
Ayers,	Hitchcock,	Reynolds,
Barbour,	Holmes,	Rhodes,
Barton,	Howard, of Los Angeles,	Ringgold,
Barry,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Schell,
Belcher,	Hughey,	Schomp,
Bell,	Hunter,	Shurtleff,
Biggs,	Inman,	Smith, of Santa Clara,
Blackmer,	Johnson,	Smith, of 4th District,
Boucher,	Joyce,	Smith, of San Francisco,
Brown,	Kelley,	Soule,
Burt,	Kenny,	Steele,
Campbell,	Keyes,	Stevenson,
Caples,	Kleine,	Stuart,
Chapman,	Laine,	Sweasey,
Charles,	Lampson,	Swenson,
Condon,	Larkin,	Terry,
Cowden,	Larue,	Thompson,
Cross,	Lavigne,	Tinnin,
Crouch,	Lewis,	Townsend,
Davis,	Lindow,	Tully,
Dean,	Mansfield,	Turner,
Dowling,	Martin, of Santa Cruz,	Tuttle,
Doyle,	McComas,	Vacquerel,
Dunlap,	McConnell,	Van Dyke,
Estee,	McCoy,	Van Voorhies,
Estey,	McFarland,	Walker, of Tuolumne,
Evey,	McNutt,	Waters,
Farrell,	Mills,	Webster,
Filcher,	Moffat,	Weller,
Freud,	Morse,	Wellin,
Garvey,	Murphy,	West,
Glascock,	Nason,	Wickes,
Gorman,	Nelson,	White,
Grace,	Neunaber,	Wilson, of Tehama,
Gregg,	Ohleyer,	Wilson, of 1st District,
Hager,	O'Sullivan,	Winans,
Harrison,	Prouty,	Wyatt,
Harvey,	Reddy,	Mr. President.

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ABSENT.

Barnes,	Graves,	Noel,
Berry,	Hale,	O'Donnell,
Boggs,	Hall,	Overton,
Casserly,	Herold,	Porter,
Dudley, of San Joaquin,	Herrington,	Pulliam,
Dudley, of Solano,	Hilborn,	Shafter,
Eagon,	Jones,	Shoemaker,
Edgerton,	Martin, of Alameda,	Stedman,
Fawcett,	McCallum,	Swing,
Finney,	Miller,	Walker, of Marin.
Freeman,	Moreland,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Mr. Dudley, of Solano; for three days, to Mr. Walker, of Marin; for four days, to Mr. Herrington.

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

AMENDING RULE FORTY-THREE.

MR. DAVIS. Mr. President: I gave notice that to-day I would move to amend Rule Forty-three, by striking out the word "ten" and inserting the word "five." I now make that motion because I believe members can explain their views in five minutes. The arguments are generally the same as they were in Committee of the Whole.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I hope the amendment will not prevail. I oppose it because it is cutting off debate, and it will be one of the means of defeating this Constitution. No man can make an intelligent argument in five minutes on any subject. When I have anything to say, I say it as quickly as possible, but I don't believe in cutting off debate. It is in the interest of the adoption of this Constitution, not to adopt this amendment. Five minutes is not time enough. There are two great points to come before this Convention, and if they are not carried in the interest of the people, the Constitution will be beaten in San Francisco.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. President: I regret very much to have to differ with the gentleman from Nevada, but I believe it is unwise to restrict debate to a less period than ten minutes. We are here under peculiar circumstances. In matters of legislation every delegate knows, and particularly those who have been members of the Legislature, that the latter part of the sessions vicious legislation is very apt to be passed, and a great many errors and mistakes creep in. But in matters of ordinary legislation, there are checks and balances that you do not have in a Constitutional Convention. If the Assembly has hastily passed a bill the Senate can defeat it. If the Senate acts hastily, the Assembly can review it, and if both Houses act hastily, there is the executive veto. Here we have no coördinate branch, and for that very reason we should be very careful what we do. It is almost impossible, in a body like this to avoid mistakes, the best we can do. I know there are delegates who feel that they ought to be at home, but it behooves to guard against mistakes and hasty action now more than at any time since the Convention met.

MR. WICKES. Mr. President: I must differ with my colleague. I do not believe ten minutes to be time enough, much less five. Hence I hope the amendment will not be passed.

MR. BROWN. Mr. President: I am under the impression that it would be wrong for this amendment to pass. There are some men who will not speak more than five minutes, but there are grave questions yet before this body, and it is important that they should be well understood and acted upon advisedly. I think it would be decidedly wrong to adopt this amendment at this time.

The motion to amend the rule was lost.

PETITIONS.

Messrs. Larue, Morse, and Burt presented petitions, requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

THE RAILROAD COMMISSION.

THE PRESIDENT. The question is upon the amendment of the gentleman from Placer, Judge Hale, to section twenty-two.

MR. HOWARD, of Los Angeles. Mr. President: There is one provision in that amendment which I cannot vote for, and that is the provision which gives the company the right to sue these Commissioners.

MR. HAGER. That word is not in my amendment. It was put in at the suggestion of some one at the last moment. I will allow it to be stricken out.

MR. WILSON, of First District. If the gentleman put it in at the suggestion of somebody, why does he strike it out?

MR. HAGER. I put it in there because I thought the railroad companies should have a hearing before the Commissioners if they did anything that they consider wrong. But some think that it goes too far. If it goes to the extent of allowing them to be sued, it does go too far. It was put in at the last moment.

SPEECH OF MR. MCFARLAND.

MR. McFARLAND. Mr. President: I would like to inquire upon what legal principle, or upon what theory of right this Convention assumes to compel the transportation companies to carry anybody free over their road. I want to know if there is any principle through which it could be done, except upon the naked principle of the usurpation of absolute power. Now, sir, it could only be done upon the theory that these transportation companies, at some time or another, had entered into a contract to carry somebody which would include these Commissioners. Unless that has been done, you have no more power to order them to do so than you have to order them to carry this Convention, or to carry all the officers of this State, or to carry all the red-headed men in this State, or all the women in this State.

MR. HOWARD, of Los Angeles. Is it not in both the Acts creating the two former Commissions?

MR. McFARLAND. I don't know, sir. If it is, it has no business there. Now, sir, I have examined the statute to some extent, though not fully, and the only place I can find anything wherein the railroad company has agreed to anything of this kind is in a statute passed April fourth, eighteen hundred and sixty-four. There is a little bit of history connected with it, too. That was at the time when certain States of this Union were in open rebellion; and after reciting these facts the Act goes on to provide: first, for the issuance of bonds by the State, or to secure the interest on bonds for the company; second, to levy taxes for that purpose. And section four provides the conditions of this grant: that it is made upon the express conditions and considerations that the said Central Pacific Railroad Company shall at all times convey troops over their said road, etc. Now, that is the only law I can find on the subject. Now, you propose to say, by this Constitution, that this company shall carry certain parties free. Where is the power? Where is the right? You have just as much right to say that every hotel in this State shall feed these Commissioners free of charge. You have just as much right to say that the clothing merchant shall clothe them free; that their whisky and cigars shall be furnished free. There is no principle in law by which you can say that common carriers shall carry them free, unless they have agreed to do it. The utmost extent to which the doctrine in the Elevator cases goes, is that parties doing certain kinds of business may be regulated. It says that they may charge only so much for storing wheat in their private warehouses, but it nowhere says that they shall store wheat for nothing. The extent of that doctrine is that you may say how much a man may charge, but it does not go to the extent of saying that they shall do certain things without remuneration. Now, what right have you to say that the transportation companies of this State shall carry these three men all over the State free any more than anybody else. It is not upon the theory that the railroad belongs to the State. Nobody claims that. The State has admitted otherwise. The railroads belong to the companies who own them; who own the land and the right of way. Who owns the locomotives? Not you, sir. Do they belong to this Convention, or to the State? Is it private property, or is it public property? It is private property, and you have said so. Now, you propose to say to the men owning this property that they shall do business on it for nothing. I say you have no such power. You have as much right to say that my friend Dr. Caples shall furnish bread to these men free of cost.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I cannot agree with the views of the gentleman from Sacramento. It occurs to me that the Elevator case goes upon the police power of the State. Now, we propose to look after these transportation companies under the police power, and to carry out that power, it necessarily carries with it all the incidents. One of these incidents is the supervision of travel upon these roads, to see the manner in which they conduct business, and what is necessary to be done by these Commissioners. Whenever a power is granted, every incident connected with that power is also granted to make it effectual. It is the police power, the sovereign power, and all the incidents go with that police power. Therefore, I maintain that this police power, being one of the requisites for this supervision of these companies, every incident connected with that power is also granted. These Commissioners have not only the right to look out for them, to see that their rates of freights and fares are just and right, but to use all the necessary means for the purpose of acquiring the information and data upon which to fix the rates of freights and fares. That is my proposition. Aside from that there is a constitutional provision reserving the power to alter or abolish these charters. I consider, under that reserved power, irrespective of any particular contract, we have the right to have these Commissioners to travel upon these roads. And, sir, that is the law at present. That is the law made and passed by the last Legislature. If that law be unconstitutional, why has not an effort been made to present a case to test it? I contend, that under the police power and the reserved power of the State, we have a right to provide that these Commissioners shall ride free over every railroad in California. There is one question I would like to ask the gentleman from San Francisco. He says that these Railroad Commissioners shall have process of the Courts. I would like to know what Courts? Under this Constitution, we have established a number of Courts. We have established Superior Courts and inferior Courts. That language is not sufficiently plain. Though I shall support the section as it stands, yet at the same time I think it is ambiguous. It appears to me we had better designate the Courts.

MR. HAGER. That is not my amendment; that is in the original section. I merely made two amendments, and copied the remainder of the section.

MR. JOHNSON. These inferior Courts will be also Constitutional Courts. It may be argued that these Commissioners would have a right to process from those Courts. The language ought to be plainer in that respect.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: I rise, sir, to place myself on record. I have a substitute I want to offer for the whole report.

THE PRESIDENT. It is not in order.

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MR. DOWLING. I do not care what any man in this House thinks about the motives which actuate me in offering the amendment which I shall offer, or in offering my humble protest against this Railroad Commission scheme. I believe a great many are supporting this scheme in good faith, because they cannot get any relief from the Legislature. The Legislature has confessed itself unable to do anything. It has admitted that it is helpless in the matter, and we now put the whole power in the hands of a Commission—in the hands of three men elected from the districts, which is, in my opinion, a very dangerous precedent. Now, sir, I have received a letter from a gentleman in San Francisco, in which he says: "The creation of a Railroad Commission is, in my opinion, clearly a fraud upon the people. Government in civilized countries is divided into three distinct legislative branches, working harmoniously together in coöperation, and yet in separate lines. This Commission will find these three great branches of government placed into their hands. They make laws, execute their own laws, and determine and judge of their own laws. It is an absurdity. The principle is wrong."

MR. HARRISON. Who wrote that letter?

MR. DOWLING. That is none of your business. I don't want to surrender the power that belongs to the people into the hands of any man or set of men, unless the people have the power to drag them out of it. Adams never advocated a Commission. Commissioners, as a general thing, are nothing but papsuckers upon the community. They are salaried officers. If you place this power in the hands of these men what is to prevent them, after being elected, from snapping their fingers at the people? You have no control over them. I want to place myself upon the record as unalterably opposed to this thing, on principle.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I call for a division of the question on the proposition of Judge Hager. He has offered something like ten amendments to the section reported by the Committee of the Whole; some of them, I think, destructive of the principles aimed at by the section. I have no objections at all to providing that they shall travel free upon railroads. In my opinion it was provided for in the section itself, because it is a necessary incident to the powers given them. They are to examine roads and supervise roads, and I fail to see how they can do it unless they travel upon them. The power to examine the books of a corporation implies the power to get them. The power to examine roads and bridges embraces the power to get there. But I have no objection to saying directly that they shall travel free. I do object to this provision inserting common carriers. Now, is it actually and seriously proposed to put all the common carriers in this State under regulation and supervision—every little scow, every little ship and boat—do you propose to subject them to this provision? We want to encounter no such opposition as this will encounter. As to this amendment to insert the words, "rates of charges established," I have no objection to that. But there is no necessity for it, because the very power to correct abuses confers also the power to see that their rates of charges are obeyed. Any refusal to obey these rates is an abuse at once. Still, I have no objections to it. It may be it will assist, but it is superfluous. The next amendment is, that the party aggrieved may have a right of action against the corporation for damages, etc. That might do in the Code. The whole matter is covered by a provision in the report of the committee, that nothing in this section contained shall be held to deprive any party of his right of action. Now, if I understand the matter, there were two methods open to a party aggrieved—the same methods as are open to a party assaulted—a civil action and a criminal action. There may be an abuse that he knows of—an abuse which affects him personally, and also affects the whole community. Of course he should also have a civil right, and the provision in the section is just as effectual as that proposed by the gentleman. The next amendment is, that he proposes to include "forfeiture of franchise." The committee had it "forfeiture of their charter." I think the forfeiture of franchise would cover the whole business, without saying anything about the charter. I do not believe it is of vital importance to the efficiency of the Commission, anyway.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I rise, not for the purpose of debating this question, because I am satisfied that this Convention will adopt, in substance, either the amendment of the gentleman from San Francisco, Mr. Hager, or the report of the Committee of the Whole, and I think the Convention is not in a temper to listen to any argument; but I avail myself of the privilege of speaking upon this subject rather to explain and remove a misapprehension, and I say, as other gentlemen have said, I am in favor of a Commission, and always have been in favor of a Commission. I have gone farther in discussing the principle of the thing than most of the gentlemen upon this floor, and I have been in favor of a Commission to correct abuses. The question, however, with what power shall these Commissioners be clothed? I am in favor of clothing them with all the power that the Massachusetts Commission have; with all the powers that the Wisconsin Commission have, which has been so successful, as shown by the letter which the gentleman from Los Angeles, General Howard, had the Clerk read at the desk the other day. That was a Commission created, not by the Constitution, but by the Legislature; however, I am in favor of a Constitutional Commission, but the power in the Constitution should, in my judgment, be limited to the same powers that are given the Massachusetts Commission and the Wisconsin Commission; beyond that I would simply say, "and such other and further powers as the Legislature from time to time may choose to give them." I believe that is the best form of Commission to get at present.

Now, to leave it all to the Legislature is to make the Legislature regulate freights and fares, and, as has been shown upon this floor, the Legislature is not adequate to the task. The Legislature should say what powers these Commissioners shall have, and the Commissioners should exercise those powers. That is the best system. But I do not believe this Convention will adopt it. I think they will adopt that which is not so good as those of Wisconsin and Massachusetts, not so good as that which I have suggested. But I have a right to state here, and I state them freely, my own views on the subject. And now as the discussion upon this whole thing is practically ended, I will simply say this: Heretofore I have relied purely, in the discussion of questions, upon moral reasoning and common sense, as far as I am capable of seeing it, and have accorded honesty of purpose and right motives to every gentleman upon this floor. Certain members of this Convention, however, have not been willing to concede the same to others, and they have undertaken to attribute improper motives to the views which other gentlemen have advanced. I take this occasion to say that there is no gentleman on this floor, I care not who he may be, who is more free from corporation influence than I myself am. I do not care ten cents for the political views or public views of any corporation in this State, and no corporation in this State can influence me the weight of a hair in my public position. That I am employed by corporations in my professional capacity is true. That I am employed in the same capacity against them is true. I have won any number of suits against them, and every corporation, and every man who knows me knows this: that in my professional career my clients are dictated to by me. They never tell me what to do. I tell them, and when they do not obey my orders I cease to be their attorney. As far as my public employment is concerned, and as far as politics are concerned, they have no influence with me, more than the idle wind. No man ever attempted to influence me in the slightest degree, and no man ever will who knows me, and I spurn and scorn the insinuations. I am induced to say this, because somebody who does not know me may think that some one can hold a whip over me as they are holding it over themselves. But those who know me know that I have advocated, and will advocate, upon the floor of this Convention, such measures as I believe to be right, and that I never fail, never shirk, to announce my honest convictions, be the consequences what they may. [Applause.]

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: At a very early day I took occasion in this Convention to express my views upon this subject. If I could have my way, I would strike out this Commissioner business and leave the matter to the Legislature. But I am satisfied that this Convention intends to have Commissioners, and I am satisfied that the Constitution will be adopted by the people. Therefore I do not think anything is to be made by making a fight against the Commission. I don't know anything that can be better. If any one can suggest it, I will support it. It does seem to me that we are wasting time in this discussion, and that we ought to be able to come to an agreement. Of the amendments suggested here, it is merely the difference between tweedledee and tweedledum. I hope we will now come to a vote.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: The amendments of Judge Hager are so numerous, that we will have to compare the substitute with the original section in order to find out what the amendments are. Most all the amendments proposed by the gentleman are verbal ones, altering one word or another in the original section. The three material amendments are: That the Commissioners shall have free passage upon all railroads. That is the first one. As far as I am concerned I am in favor of that. I think it is a just provision and ought to be adopted. His second amendment is to add the words: "and by common carriers upon railroads." For the life of me I cannot see the necessity for such an amendment. That it will ever do any harm is doubtful, though it is possible it may. I do not see any necessity for it, because the section refers to railroad and other transportation companies. I know the reason why he puts it in there, but I do not see any necessity for it. The other amendment, and the only one I look upon as really important is, that providing that they shall hear and determine complaints by and against railroads. I hope that will not be adopted. I think the railroads ought to go into the Courts of the country if they have any rights to vindicate. The object is here to establish an easy mode of redress for the people, that they may go and make their complaints, and have their grievances redressed, without much expense for attorneys and witnesses. That is the object, and one of the main objects in placing this matter of freights and fares in the hands of these Commissioners. I think if you are going to put that in, it would be better to leave this section out. I hope that part of it will not be adopted.

MR. HAGER. I ask to have the words stricken out. I had understood that there was no objection to them.

MR. ESTEE. That will help it. Now in regard to this section reported by the Committee of the Whole. The section has some things in it which I do not concur in. I do not believe it was wise to put in the penalties. I do not believe it is wise, for fear it may be held to be a limitation upon the Legislature in future in fixing and imposing other penalties. But it was adopted by the Committee of the Whole, after a thorough and careful examination, and I deem it my duty to obey the mandates of this committee; hence, I shall support the section. It represents the average judgment of this Convention, and as Chairman of the Committee on Corporations, it is my duty to fall into line and obey the mandates of the Convention. Now, we have a few merely verbal amendments. We have the word "otherwise" put in; we have the word "charter" put in; we have the word "aggrieved" put in, and I cannot see any necessity for changing the verbiage. I know the gentleman intends to improve the section, and it may be possible that he does improve it, but for one, I fail to perceive it, except in the solitary instance of granting free passage to the Commissioners. Therefore, I prefer the section reported by the Committee of the Whole.

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REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I hope, after the unprecedented long discussion had in this Convention in regard to this matter, that the section will be adopted as it came from the Committee of the Whole. I will take occasion to say here, that section twenty-two, as reported by the Committee on Corporations, in my judgment, is not perfect, and it would not be wise for this Convention to seek to adopt it. The history of this section is well known. It is well known by every member of this Convention that the Committee on Corporations reported a section upon the subject; that it came into this body, acting as a Committee of the Whole, and was there thoroughly discussed. It was finally sent back to the committee, with instructions to amend it, and the result was this section twenty-two. After that, we had a discussion of about four weeks on this whole article, and I think, about ten days' discussion upon this particular section. I believe it embraces the average judgment of this Convention, and while I would prefer the section as reported by the committee, I am willing to take this section.

THE PRESIDENT. The question is upon the amendment proposed by the gentleman from San Francisco, Judge Hager, which the Secretary will read.

THE SECRETARY read:

"Strike out amendment of committee and insert the following: 'SEC. 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors of their respective districts, at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have free passage on all railroads, and they shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and by common carriers on railroads, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all such common carriers, railroad, and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints by and against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their rates of charges as established, and their decisions, and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars or be imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable. Any party aggrieved may have a right of action against such corporation, company, or carrier, for damages sustained by charging excessive rates, and in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from otherwise maintaining actions against any of such companies or carriers. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of franchise and charter, or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform their duties. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever from any cause a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the unexpired term.'"

The ayes and noes were demanded by Messrs. Grace, Condon, Larkin, Barbour, and Joyce.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Garvey,	Mansfield,
Beerstecher,	Glascock,	McConnell,
Blackmer,	Hager,	Miller,
Boucher,	Hale,	Nason,
Brown,	Harvey,	O'Sullivan,
Burt,	Howard, of Los Angeles,	Rhodes,
Campbell,	Howard, of Mariposa,	Ringgold,
Casserly,	Hunter,	Soule,
Chapman,	Inman,	Stuart,
Charles,	Johnson,	Sweasey,
Dean,	Kelley,	Thompson,
Dowling,	Lampson,	Tinnin,
Evey,	Larkin,	Tully,
Vacquerel,	Webster,	Wilson, of Tehama—43.
VanVoorhies,	Weller,	

NOES.

Andrews,	Hughey,	Rolfe,
Barbour,	Jones,	Schell,
Barry,	Joyce,	Shomp,
Barton,	Kenny,	Shurtleff,
Belcher,	Keyes,	Smith, of Santa Clara,
Bell,	Kleine,	Smith, of 4th District,
Biggs,	Laine,	Smith, of San Francisco,
Caples,	Larue,	Steele,
Condon,	Lavigne,	Stevenson,
Cowden,	Lewis,	Swenson,
Cross,	Lindow,	Swing,
Crouch,	Martin, of Santa Cruz,	Terry,
Davis,	McComas,	Townsend,
Doyle,	McCoy,	Turner,
Dunlap,	McFarland,	Tuttle,
Estee,	McNutt,	Van Dyke,
Estey,	Mills,	Walker, of Tuolumne,
Farrell,	Moffat,	Waters,
Freud,	Morse,	Wellin,
Gorman,	Murphy,	West,
Grace,	Nelson,	Wickes,
Gregg,	Neunaber,	White,
Harrison,	Ohleyer,	Wilson, of 1st District,
Heiskell,	Reddy,	Winans,
Holmes,	Reed,	Wyatt,
Huestis,	Reynolds,	Mr. President—78.

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

Seconded by Messrs. West, Tully, Larkin, and Howard, of Los Angeles.

THE PRESIDENT. The question is: Shall the main question be now put.

Lost—ayes 51, noes 57; and the Convention refused to order the main question.

MR. JOHNSON. Mr. President: I offer an amendment.

THE SECRETARY read:

"After the word 'have,' in line ten, insert 'free passes on all railroads, and they shall have;' and in line fifteen, before the word 'Courts,' insert 'Superior;' and in line twenty, before the word 'Courts,' insert 'Superior.'"

MR. JOHNSON. Mr. President: I offer that because I think it is in general harmony with the sentiment of the Convention. I think it is entirely proper that it should be inserted. I have bettered the language of Judge Hager's amendment in that respect. The only other amendment is that the process shall be from the Superior Court.

MR. CAMPBELL. I offer an amendment to the amendment.

THE PRESIDENT. There is an amendment to the amendment now pending. The question is upon the amendment of the gentleman from Sonoma, Mr. Johnson.

Lost.

MR. GREGG. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'incompetency,' in line forty-six."

MR. GREGG. The provision in regard to filling vacancies is not necessary.

The amendment was lost.

MR. CAMPBELL. Mr. President: I now offer my amendment.

THE SECRETARY read:

"Strike out 'process of the Courts,' in line fifteen, and insert in lieu thereof, 'have power to issue subpœnas and all other necessary process.'"

THE PRESIDENT. The question is on the amendment.

Adopted—ayes, 57; noes, 42.

MR. VACQUEREL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add, in line twenty-six, after the word 'Commission,' the following: 'or shall fail to run a train daily on each line, or branch, or section, now in operation.'"

MR. VACQUEREL. Mr. President: I do not see the use of these Commissioners, unless we force the railroad company to run their trains. Now, if we are going to do anything, let us do it, or else not undertake it. Suppose the rates established do not suit the companies. They may say: there is the road, run it; we will not run our cars on it. What are the farmers going to do with their crops? Are they going to eat them? If you want to make this thing effective you must adopt this amendment.

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

Lost.

MR. JOHNSON. Mr. President: I offer an amendment.

THE SECRETARY read:

"After the word 'have,' in line ten, insert 'free passage on all railroads, and they shall have.'"

MR. SCHELL. I rise to a point of order. That has been voted down twice.

THE PRESIDENT. That amendment was voted upon five minutes ago. The question is on the amendment recommended by the Committee of the Whole.

The ayes and noes were demanded by Messrs. Tully, Keyes, Grace, Lampson, and West.

The roll was called, and the section adopted by the following vote:

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AYES.

Andrews,	Hager,	Neunaber,
Ayers,	Hale,	Ohleyer,
Barbour,	Harrison,	O'Sullivan,
Barry,	Heiskell,	Reddy,
Barton,	Holmes,	Reed,
Beerstecher,	Howard, of Los Angeles,	Reynolds,
Bell,	Howard, of Mariposa,	Rhodes,
Blackmer,	Huestis,	Ringgold,
Boucher,	Hughey,	Rolfe,
Brown,	Hunter,	Schell,
Burt,	Inman,	Smith, of Santa Clara,
Campbell,	Johnson,	Smith, of 4th District,
Caples,	Joyce,	Smith, of San Francisco,
Charles,	Kenny,	Soule,
Condon,	Keyes,	Steele,
Cowden,	Kleine,	Stuart,
Cross,	Lampson,	Sweasey,
Davis,	Larkin,	Swenson,
Dean,	Lavigne,	Swing,
Doyle,	Lindow,	Tinnin,
Dunlap,	Mansfield,	Tuttle,
Estee,	McComas,	Walker, of Tuolumne,
Estey,	McConnell,	Webster,
Evey,	McCoy,	Wellin,
Farrell,	McNutt,	West,
Filcher,	Moffat,	Wickes,
Freud,	Morse,	White,
Garvey,	Murphy,	Wilson, of Tehama,
Gorman,	Nason,	Winans,
Grace,	Nelson,	Wyatt—92.
Gregg,		

NOES.

Belcher,	Martin, of Santa Cruz,	Townsend,
Biggs,	McFarland,	Tully,
Chapman,	Miller,	Turner,
Crouch,	Mills,	Vacquerel,
Dowling,	Schomp,	Van Dyke,
Harvey,	Shurtleff,	Van Voorhies,
Jones,	Stevenson,	Waters,
Kelly,	Terry,	Wilson, of 1st District,
Laine,	Thompson,	Mr. President—28.
Lewis,		

PAIRED—Messrs. Glascock, aye, with Dudley of Solano, no; Larue, aye, with Shoemaker, no.

THE PRESIDENT. The Secretary will read section twenty-one, which was stricken out by the Committee of the Whole.

THE SECRETARY read:

"SEC. 21. The State shall be divided into three railroad districts, as nearly equal in population as practicable, from each of which one of the three Railroad Commissioners shall be elected."

The report of the Committee of the Whole was concurred in.

THE PRESIDENT. The Secretary will read section twenty-five as amended by the Committee of the Whole.

THE SECRETARY read:

"SEC. 25. Every railroad corporation and other incorporate company or association existing under the laws of this State, or doing business therein, at the time of the adoption of this Constitution, shall accept the provisions of this article in good faith before being entitled to claim or have the benefit of any future legislation thereunder."

MR. SCHELL. Mr. President: I move to strike out section twenty-five. It is entirely superfluous and useless in my judgment. I think it ought to require no argument. It is of no more use than a fifth wheel to a wagon.

MR. BEERSTECHER. I offer an amendment to the section.

THE PRESIDENT. The question is on the motion to strike out.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: This section was added to the report of the committee upon the motion of Mr. Herrington. Mr. Herrington being called home on account of imperative business, he stated to me that he desired to have the section amended, and the amendment which I have sent to the desk is the amendment which Mr. Herrington would offer to the section. Section twenty-five, as found in this report, is found in every new Constitution. An examination of the Constitutions framed and adopted during the last ten years will show that this provision is found in them. It is unnecessary for me to take up the time of this Convention in arguing this matter. I cannot see why it should be stricken out. I challenge any man in this Convention to show me why it should be stricken out.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I hope the section will be stricken out. It is mischievous. Under the Constitution and laws, and especially under the Act under which these companies were organized, we have the power to make them obey the law. If we put this in it may interfere with our right to make them obey the law. Therefore, I hope it will be stricken out.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I hope the section will be stricken out. It is a monstrous absurdity. What is it? It declares that incorporated companies shall submit to the law. Why should we ask that they submit to the law? Is it not sufficient that we make the law and proclaim the law? Why, it is the most extraordinary provision ever heard of in a legislative body, to say that certain parties shall submit to the law before they can claim the benefits of the law. The law-making power lays down the law, and it does not ask whether the subjects will accept it or not—they must accept it and obey it. There is a very dangerous implication in this provision, outside of the monstrous absurdity of the thing. I hope it will be stricken out.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: At the time this section was before the Committee of the Whole, I had the honor to present my views upon it. As the committee acted in opposition to the views I presented, I suppose I had something to do with the passage of this section. [Laughter.] I am very glad to see that upon sober thought the Convention is getting around in the right direction. Now, this provision was taken from the Constitution of Pennsylvania. At that time it was necessary in that Constitution, because some of the old corporations had special charters, and they were beyond the power of the Constitution in some respects. This, then, was put in as a penalty, to compel them to come in. They might have stood out, and I presume many of them did, but they could then claim none of the benefits of the Act. But it is utterly impracticable and useless in California. I said so before the Committee of the Whole. It is an absurdity. It implies that the corporations are beyond the control of the State here. In the Committee of the Whole I urged these plain objections, and I believe it passed nearly unanimously. [Laughter.]

The section was stricken out.

MR. VACQUEREL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section nineteen by adding, in line four, after the word 'officer,' the following, 'other than Railroad Commissioner,' so as to read: 'SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature, or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.'"

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

Adopted.

MR. LAINE. Mr. President: I wish to offer an amendment to section eighteen.

THE SECRETARY read:

"Amend section eighteen by striking out the word 'or,' in the line after the word 'company,' and insert the word 'nor' in lieu thereof; and by adding at the end of the section the following, viz., 'except such interest in the business transportation as lawfully flows from the ownership of stock therein.'"

Adopted.

MR. VAN DYKE. I move to amend the subhead between sections sixteen and seventeen.

THE PRESIDENT. That is no part of the section. It is not in order.

THE PREVIOUS QUESTION.

MR. HOLMES. Mr. President: I have voted against the previous question every time, because I wanted the House to have a fair chance. I now move the previous question.

Seconded by Messrs. McComas, Larue, Larkin, and Dean.

THE PRESIDENT. The question is: Shall the main question be now put.

Carried.

THE PRESIDENT. The question is: Shall the article be engrossed and read a second time.

Carried; and the article ordered engrossed and read a second time.

RELATIVE TO CHINESE.

THE PRESIDENT. The Secretary will read the article upon Chinese, as reported by the Committee of the Whole.

THE SECRETARY read:

"SECTION 1. The Legislature shall prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are, or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair, or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary.

"SEC. —. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

"SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crimes.

"SEC. 6. No alien ineligible to become a citizen of the United States shall be permitted to catch fish in any waters under the jurisdiction of this State; nor to purchase, lease, own, or hold any real property in this State, and all contracts of conveyance or lease of real property to any such alien shall be void.

"SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared herein to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism, being a form of human

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slavery, is forever prohibited in this State, and all contracts for coolie labor are null and void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or their location within prescribed portions of those limits; and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation."

MR. STUART. Mr. President: I move to strike out the article on Chinese.

THE PRESIDENT. The question is on the motion to strike out the article.

SPEECH OF MR. STUART.

MR. STUART. Mr. President: I oppose this article, and I hope every section of it will be stricken out. Such savage monstrosity has never before been penned by man. Is it for Christian men, in this enlightened age, and only for California, to commit this unnatural act of attempting the destruction, by starvation or otherwise, of over one hundred thousand men? Is there anything to be conceived more horrible or more savage? Sir, this question cannot be settled in this way. It must be done by calm, intelligent, and statesmanlike argument; and this political cry of both parties to catch the floating vote, is too well understood at the East. You will find, sir, that intelligence and justice only control our governmental policy. Sir, since my last remarks on this subject I see no new light thrown on this question during the long, threatening, acrimonious, and boisterous debate in the Committee of the Whole, to cause me to alter my mind, or take back one single word uttered at that time.

I hope now, sir, there is a better feeling among its members, and that reason has now enthroned herself in our midst, and will control our actions. Let us now reflect, and use our better judgment and purer reasons, before we pass this terrible article. Such a barbarous, inhuman, or unnatural proposition has never been conceived or entered the brain of either Pagan or Christian man since the foundation of the world. Talk of the Draconian laws written in blood! Where is one ever written or proclaimed by man that equals this in barbarism and inhumanity? You can trace down the stream of time through all savage life, with its wars, its cruelties, and its slavery, and fail to find its equal or parallel for injustice, treachery, or ingratitude. These men, after being invited to our shores, after building our railroads, clearing up our farms, reclaiming over one million acres of our swamp and overflowed land, planting our vineyards and our orchards, reaping the crops of the small and the needy farmers, gathering our fruits and berries, digging and sacking our potatoes, supplying our markets with the smaller kinds of fish from the sea, manufacturing our woolen and other goods, cleaning up the tailings of our hydraulic mines, scraping the bedrock of our exhausted mining claims, and relieving most of the householders in this State of the household drudgery which would be imposed upon our wives and daughters, thus contributing to our happiness and true prosperity. Sir, after all this, which has added many millions annually to the State and nation's wealth, you would commit treason against our Government by putting this unjust and inhuman article in our organic law. I beg of gentlemen on this floor to pause, to consider well, and not be carried away through blind prejudice, through political ambition, or through race hatred; but act like civilized, just, and Christian men; not to do an act that would shock all humane men throughout the world, both Christian and Pagan. Sir, this is what I plead for, and will ever plead for; and will sympathize with the weak and downtrodden of the world, and hope to ever remain on the side of humanity and justice as long as life shall last. I may well say that

"Man's inhumanity to man
Makes countless thousands mourn."

Sir, I have been the object of attack, both public and private, for uttering my honest convictions on this grave and momentous question. Life has been threatened; lies and slanders have been circulated. But they emanate from sources too low, too filthy, too cowardly, for me to notice. I will now say that no threats, no fears, no intimidation, no coercion, shall ever deter me for a moment from defending the right or doing my conscientious duty. I have also received letters of approval and support from persons residing in this State, and in our national Capital, entire strangers to me, to whom I return my sincere and heartfelt thanks. How different it is with members of this Convention, many of whom, and the ablest on this floor, I have known for a quarter of a century. I am no stranger here, or to the material interests of this State, after a residence of thirty years in it. I have no sacrifice, either human or Divine, moral or political, to throw before this Juggernaut or to appease the anger of Moloch, and am sorry to see so many of this Convention standing indifferently by, while others are trying to destroy the prosperity of our State and Nation—totally destroying our great producing and manufacturing interests of this State—by silently encouraging this insane crusade against Chinese labor; for over one hundred thousand men would follow their expulsion. Do they conceive the enormity of this loss to the State? Don't they know that the loss of this vast army of labor would bankrupt and overwhelm all the manufacturers and most of the producers of this State? Deprive us of them, sir, and you will have no more ships to load from our bays, no more fruit to adorn our tables, no more wool or woolen goods to warm our bodies, no more wine to cheer our lives or sustain our bodily infirmities. All will return again to its primitive condition—a state worse than was France after the edict of Nantes, or of Spain after the expulsion of the Moors. All, I say, will again be swallowed up in this maelstrom of blind rage and fury. It is complained that the Chinese are penurious in their diet, and that they live on nothing but rice. The truth is, however, that they live here at a greater cost, and have a greater variety of food in their ordinary repast, than do most of their Caucasian enemies, and I dare say much better than they enjoyed in their native country. Of pork, poultry, fish, and vegetables they use large quantities, and good, for which they pay high prices; also, large quantities of American manufactured goods, in the way of clothing, boots, shoes, and hats. And the general condition of health among them is far better in the country than among their Caucasian enemies; seldom a day's work is lost on account of sickness. The care of their person and health is almost marvelous. Every night, after their work is done, and frequently before they eat their meal, each and all go through their ablutions from head to foot, and on Sundays their bathing and washing occupy nearly half the day. What a lesson! What an example to their boasting Caucasian persecutors! It would be well for them and the country if they would copy or practice some of their heathen rites—such as cleanliness, economy, and industry. I am surprised at the indifference of the farmers in this Convention. Is it through fear of the torch that is daily threatened us; or are they making a record, as they think, for political preferences, by keeping silent? I am told that many of them agree with me. If so, why not speak? In my former remarks on this subject, I called upon them to express their views on this all-important question to the producers of this State. But one of them differed with me—Mr. White, of Santa Cruz. All the rest, I take it by their silence on the subject, concur in my views. If not, they can now place themselves, as the politicians call it, on record. I should also except the gentleman from Alameda, Mr. Webster. In his fierce denunciation of the Chinese, I asked him whether Italians and others did not compete with them? He answered: "The Italians compete with them only because they have been brought up from childhood to labor and economy." What a concession! Economy and labor! Oh, consistency, thou art a jewel. Mr. Reynolds, of San Francisco, the ablest St. Paul of their tribe of persecutors, differs from all the rest in his persecution of them. He says he does so on account of their intelligence, industry, and thrift; not on account of their ignorance and filth. I think, sir, I see a ray of light beaming through the dark minds of these benighted persecutors, and hope, like their great leader, they will become converted and sin no more in this way. General Colby, of Butte County, one of the most noted farmers and legislators of this State, in a letter of January fourteenth, to the San Francisco Patron—I suppose the organ of the Grangers—says: "Having asked my views on the incendiary agitation going on in San Francisco, ostensibly against the Chinese, but in fact aimed at all the material interests of the Pacific coast, I have only to say that the character of its leaders gives it but little weight or consideration with the thinking or conservative men or the people of the country. The leaders, or most of them, are of foreign element, ignorant of the practical working of our Government, and now, to say the least, they should be the last to attempt a raid against any nationality. In fact, for doing the same thing in the land of their nativity they would be branded as outlaws, and subject to banishment and hard labor for life." Now, sir, what do the Grangers—who have been foremost, I may say, in their fierce denunciations against the Chinese—say to this, and how many thousands of our producers of this State say the same? I think all. I will not go into the report of Senator Morton, as all the country has read and knows it. A few words about this fierce cry, that sounds like the last wail of demagogues, that the country is overrun by the "heathen Chinee," and our white labor is driven from all employment, or to starvation, and from the country. There is not a man on this floor but knows this is not so. He further knows that it is only the cry in connection with "the Chinese must go," uttered and continually repeated, day by day, by a few insane foreign and alien leaders of a party in San Francisco, who are deceiving their followers, and will cause want and distress in their wake. All such upheavals and excitements are but of short life and barren of good results, and soon to be forgotten. Now, a few questions to be answered by him who answers me: Who are they who desecrate the Sabbath? Who form our rioters and hoodlums? Who fill our alms-houses? Who are plotting to overthrow our common schools? Who stuff our ballot boxes? Who are conspiring to overthrow and destroy our Government, and to utterly stamp out liberty, that despotism over conscience, mind, and muscle, may rise upon the ruins? Who constitute the Molly Maguires? Who burn our railroad depots? Who threaten the lives of our best citizens? Who are plotting to despoil our wealthy men? Who claim two thirds of our public offices? Not Chinamen. Then who are they? You may search history through all time, and examine the nations of the East through their rise and fall, and you will find China where it now is and has been for over five thousand years. Yet you will fail to find an instance where she has overrun or crowded out a single nation, however near——

[At this point in the speaker's remarks, time was called and the gavel fell.]

MR. HOWARD, of Los Angeles. I hope the gentleman will be allowed to proceed. He is the pluckiest man in the Convention. I give him my ten minutes.

MR. STUART. Thank you, General. As I was saying, on the contrary, her laborers, traders, and merchants have been encouraged to settle in all the Dutch and Spanish Philippine Islands, as well as in the English possessions of India and the French in Cambodia, and many of them are to-day their merchant princes and bankers in many of these possessions. Sir, when I was a candidate for a seat in this honorable body, the issue was directly made against me because I employed Chinese labor. I had not only to overcome this, but all the lies my enemies could invent on this subject. They charged that I had said a Chinaman was better than an Irishman or a Dutchman. I said no such thing; but did say that they had as much right here as either and should be protected the same; and I say so still. And, sir, there is

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another member of this Convention (the able gentleman from Marin), a delegate at large, who was also defamed throughout the State with similar charges, or worse; which he can refute or remain silent as he has been on this subject. Then talk about the unanimous wish of this State, and this Convention in your resolutions and memorials, when two members on this floor were elected, not only on the issue of Chinese labor, but in the face of all the lies that preceded and accompanied that bitter canvass. Give to the children of these people (and some of them native born) the privilege of our common schools in return for the school taxes they pay; cease persecuting them by personal assault, to which the law is blind; stop this disgraceful special legislation against them; stop this relentless, heartless, and inhuman persecution of foreigners against them, and then, and only then, will we do our duty. What right has the State to exact of these men poll and other school taxes, and then legislate against them, prohibiting their children the privilege of her common schools? Why pass and continue to pass arbitrary and oppressive laws against them? Why does the State fail to protect them from murder, arson, and outrage? I charge the city of San Francisco with cowardice in not protecting them in the exercise of their rights of "life, liberty, and the pursuit of happiness," which all men are guaranteed under our flag; while they have collected millions of dollars in taxes, licenses, and otherwise, yet they furnish them no protection in return. They pass cruel ordinances against them; they harass and annoy them through every device the law can invent, and why are similar outrages heaped upon them in nearly every county, town, village or hamlet in this State? Tell me; tell me; oh, tell me, why they are not protected like others in their honest toil? Or is this to be the final sum of all villainy? In case the outrages on these people do not cease in this State, and it refuses longer to protect them, then I call upon our Government to give them the ballot, that they may protect themselves. If it does not, then I demand the repeal of all naturalization laws, and to modify all immigration laws, with other nations, under the treaty making power.

MR. AYERS. Mr. President: I regret that the gentleman did not make that eloquent appeal prior to the adoption of this article by the Committee of the Whole. I regret that I must differ with my friend from Sonoma. It is a question between people of our own race, who build homes and build up the county, and the heathen who band together like brutes, and I must choose the former.

MR. WINANS. Mr. President: I offer an amendment to section one. "Strike out the word 'other,' in line ten, and insert the word 'other' between the words 'or' and 'regulations,' in line eleven."

MR. WINANS. There is an error in the language here, and I will use my influence, in the interest of education, to have it corrected. [Laughter.]

MR. MURPHY. I move the previous question.

Seconded by Messrs. Reddy, Waters, Dunlap, and Ayers.

THE PRESIDENT. The question is: Shall the main question be now put?

Lost, on division, by a vote of 46 ayes to 46 noes.

The amendment was adopted.

MR. SMITH, of Fourth District. I offer an amendment.

THE SECRETARY read:

"Insert in line five, before the word 'contagious,' the word 'incurable.'"

THE PREVIOUS QUESTION.

MR. WATERS. I move the previous question.

Seconded by Messrs. Murphy, Reddy, Barbour, and Weller.

THE PRESIDENT. The question is: Shall the main question be now put?

Division was called for, and the main question ordered by a vote of 54 ayes to 44 noes.

THE PRESIDENT. The question is on the amendment offered by the gentleman from Kern.

Lost.

THE PRESIDENT. The question is on concurring with the Committee of the Whole on section one, which the Secretary read:

"SECTION 1. The Legislature shall prescribe necessary regulations for the protection of the State, and the counties, cities and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary."

Concurred in.

THE PRESIDENT. The Secretary will read section two.

THE SECRETARY read:

CORPORATIONS EMPLOYING CHINESE.

"SEC. 2. No corporation now existing, or hereafter formed, under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision."

Adopted.

CHINESE ON PUBLIC WORKS.

THE PRESIDENT. The Secretary will read section three.

THE SECRETARY read:

"SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crimes."

Adopted.

PROHIBITING IMMIGRATION.

THE PRESIDENT. The Secretary will read section four.

THE SECRETARY read:

"SEC. 4. All further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation."

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out the section.

The ayes and noes were demanded by Messrs. Ayers, Freud, Joyce, Wellin, and Farrell.

The roll was called, and the report of the Committee of the Whole concurred in by the following vote:

AYES.

Belcher,	Huestis,	Reed,
Blackmer,	Inman,	Rhodes,
Boucher,	Johnson,	Rolfe,
Burt,	Jones,	Schell,
Campbell,	Laine,	Shurtleff,
Caples,	Lampson,	Soule,
Charles,	Larkin,	Steele,
Crouch,	Larue,	Stevenson,
Dunlap,	Lewis,	Stuart,
Estee,	Mansfield,	Swing,
Estey,	Martin, of Santa Cruz,	Terry,
Filcher,	McComas,	Thompson,
Garvey,	McConnell,	Van Dyke,
Glascock,	McFarland,	Walker, of Tuolumne,
Gregg,	McNutt,	Waters,
Hager,	Miller,	Webster,
Hale,	Morse,	Weller,
Harvey,	Nason,	Wilson, of 1st District,
Heiskell,	Ohleyer,	Mr. President—58.
Holmes,		

NOES.

Andrews,	Grace,	Reynolds,
Ayers,	Harrison,	Ringgold,
Barbour,	Howard, of Los Angeles,	Smith, of Santa Clara,
Barry,	Hunter,	Smith, of 4th District,
Barton,	Joyce,	Smith, of San Francisco,
Beerstecher,	Kelley,	Sweasey,
Bell,	Kenny,	Swenson,
Biggs,	Keyes,	Townsend,
Brown,	Kleine,	Tully,
Condon,	Lavigne,	Turner,
Cowden,	Lindow,	Tuttle,
Cross,	McCoy,	Vacquerel,
Davis,	Moffat,	Wellin,
Dean,	Murphy,	West,
Dowling,	Nelson,	Wickes,
Evey,	Neunaber,	Winans,
Farrell,	O'Sullivan,	Wyatt—53.
Freud,	Reddy,	

ALIENS CATCHING FISH.

THE PRESIDENT. The Secretary will read the amendment to section six.

THE SECRETARY read:

"SEC. 6. No alien ineligible to become a citizen of the United States shall be permitted to catch fish in any waters under the jurisdiction of this State; nor to purchase, lease, own, or hold any real property in this State, and all contracts of conveyance or lease of real property to any such alien shall be void."

Concurred in.

ASIATIC COOLIEISM.

THE PRESIDENT. The Secretary will read the amendment to section seven.

THE SECRETARY read:

"SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared herein to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism being a form of human slavery, is forever prohibited in this State, and all contracts for coolie labor are null and void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or their location within prescribed portions of those limits; and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation."

Adopted.

PUBLIC OFFICERS AND CHINESE.

THE PRESIDENT. The Secretary will read section eight, which was stricken out.

THE SECRETARY read:

"SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever. Violation of this provision shall be ground for removal from office; and no person shall be eligible to any office in this State, who, at the time of election, and for three months before, employed Chinese."

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The ayes and noes were demanded by Messrs. Ringgold, Wellin, Farrell, Harrison, and Smith of San Francisco.

The roll was called, and the recommendation was concurred in by the following vote:

AYES.

Andrews,	Hunter,	Rolfe,
Ayers,	Inman,	Schell,
Belcher,	Johnson,	Shurtleff,
Blackmer,	Jones,	Smith, of Santa Clara,
Boucher,	Kelley,	Soule,
Brown,	Keyes,	Steele,
Burt,	Laine,	Stevenson,
Campbell,	Lampson,	Stuart,
Caples,	Larkin,	Sweasey,
Charles,	Larue,	Swing,
Cowden,	Lewis.	Terry,
Crouch,	Mansfield,	Thompson,
Dunlap,	Martin, of Santa Cruz,	Tinnin,
Estee,	McComas,	Townsend,
Estey,	McConnell,	Tully,
Filcher,	McCoy,	Van Dyke,
Garvey,	McFarland,	Walker, of Tuolumne,
Glascock,	McNutt,	Waters,
Gregg,	Miller,	Webster,
Hager,	Moffat,	Weller,
Hale,	Morse,	Wickes,
Harvey,	Nason,	Wilson, of 1st District,
Heiskell,	Ohleyer,	Winans,
Holmes,	Reed,	Wyatt,
Howard, of Los Angeles,	Reynolds,	Mr. President—77.
Huestis,	Rhodes,	

NOES.

Barbour,	Farrell,	Neunaber,
Barry,	Freud,	O'Sullivan,
Barton,	Grace,	Reddy,
Beerstecher,	Harrison,	Ringgold,
Bell,	Hughey,	Smith, of San Francisco,
Biggs,	Joyce,	Swenson,
Condon,	Kenny,	Turner,
Cross,	Kleine,	Tuttle,
Davis,	Lavigne,	Vacquerel,
Dean,	Lindow,	Wellin,
Dowling,	Murphy,	West—35.
Evey,	Nelson,	

DENYING THE RIGHT OF SUFFRAGE.

THE PRESIDENT. The Secretary will read section nine, which was stricken out.

THE SECRETARY read:

"SEC. 9. The exercise of the right of suffrage shall be denied to any person employing Chinese in this State, and it shall be a sufficient challenge that the person offering to vote is employing Chinese, or has employed them within three months next preceding the election."

Upon the question of concurring in the recommendation of the committee, the ayes and noes were demanded by Messrs. Rolfe, Joyce, Smith of San Francisco, Bell, and Harrison.

The roll was called, and the recommendation of the committee concurred in by the following vote:

AYES.

Andrews,	Howard, of Los Angeles,	Rhodes,
Ayers,	Huestis,	Rolfe,
Belcher,	Hughey,	Schell,
Biggs,	Hunter,	Shurtleff,
Blackmer,	Inman,	Soule,
Boucher,	Johnson,	Steele,
Brown,	Jones,	Stevenson,
Burt,	Kelley,	Stuart,
Campbell,	Keyes,	Sweasey,
Caples,	Laine,	Swing,
Charles,	Lampson,	Terry,
Cowden,	Larkin,	Thompson,
Cross,	Larue,	Tinnin,
Crouch,	Lewis,	Townsend,
Davis,	Mansfield,	Tully,
Dunlap,	Martin, of Santa Cruz,	Tuttle,
Estee,	McComas,	Van Dyke,
Estey,	McConnell,	Walker, of Tuolumne,
Evey,	McCoy,	Waters,
Filcher,	McFarland,	Webster,
Garvey,	McNutt,	Weller,
Glascock,	Miller,	West,
Hager,	Moffat,	Wickes,
Hale,	Morse,	Wilson, of 1st District,
Harvey,	Nason,	Winans,
Heiskell,	Ohleyer,	Wyatt,
Holmes,	Reed,	Mr. President—81.

NOES.

Barbour,	Dowling,	Kenny,
Barry,	Farrell,	Kleine,
Barton,	Freud,	Lavigne,
Beerstecher,	Grace,	Lindow,
Bell,	Gregg,	Murphy,
Condon,	Harrison,	Nelson,
Dean,	Joyce,	Neunaber,
O'Sullivan,	Ringgold,	Turner,
Reddy,	Smith, of San Francisco,	Vacquerel,
Reynolds,	Swenson,	Wellin—30.

THE PRESIDENT. The question is: Shall the article be engrossed and read a second time.

Carried.

ADJOURNMENT.

MR. ESTEE. Mr. President: I move we do now adjourn until Monday, at two o'clock P. M.

Upon which the ayes and noes were demanded by Messrs. Larkin, Hunter, Wyatt, Tuttle, and Condon.

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

AYES.

Belcher,	Lavigne,	Rolfe,
Blackmer,	Mansfield,	Schell,
Campbell,	Martin, of Santa Cruz,	Stuart,
Estee,	McFarland,	Thompson,
Gregg,	McNutt,	Townsend,
Hager,	Miller,	Turner,
Hale,	Murphy,	Vacquerel,
Harvey,	Neunaber,	Wilson, of 1st District,
Holmes,	Ohleyer,	Winans,
Jones,	Reed,	Mr. President—32.
Larue,	Rhodes,	

NOES.

Andrews,	Glascock,	Nelson,
Ayers,	Grace,	O'Sullivan,
Barbour,	Harrison,	Reddy,
Barry,	Heiskell,	Reynolds,
Barton,	Howard, of Los Angeles,	Shurtleff,
Beerstecher,	Huestis,	Smith, of San Francisco,
Bell,	Hughey,	Soule,
Biggs,	Hunter,	Steele,
Boucher,	Inman,	Stevenson,
Brown,	Johnson,	Sweasey,
Burt,	Joyce,	Swenson,
Caples,	Kelley,	Swing,
Charles,	Kenny,	Terry,
Condon,	Kleine,	Tinnin,
Cowden,	Laine,	Tully,
Crouch,	Lampson,	Tuttle,
Davis,	Larkin,	Walker, of Tuolumne,
Dean,	Lewis,	Waters,
Dowling,	Lindow,	Webster,
Estey,	McComas,	Weller,
Evey,	McConnell,	Wellin,
Farrell,	McCoy,	West,
Freud,	Moffat,	Wickes,
Garvey,	Morse,	Wyatt—72.

MR. TINNIN. This Convention has been in session over four months, and has never yet done any business on Saturday afternoon, and I have no hope that it will. I therefore move we adjourn.

Carried.

And at twelve o'clock and fifty minutes the Convention stood adjourned until Monday morning at nine o'clock and thirty minutes.

ONE HUNDRED AND TWENTY-NINTH DAY.

SACRAMENTO, Monday, February 3d, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M. In the absence of the President, and President pro tem., on motion of Mr. Inman, Mr. Murphy was called to the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Glascock,	Martin, of Santa Cruz,
Ayers,	Gorman,	McComas,
Barry,	Grace,	McConnell,
Barton,	Harrison,	McCoy,
Beerstecher,	Heiskell,	McFarland,
Bell,	Hilborn,	McNutt,
Biggs,	Hitchcock,	Moffat,
Blackmer,	Holmes,	Morse,
Boucher,	Howard, of Mariposa,	Murphy,
Brown,	Hughey,	Nason,
Burt,	Hunter,	Nelson,
Campbell,	Inman,	O'Sullivan,
Caples,	Johnson,	Reddy,
Charles,	Jones,	Reynolds,
Condon,	Joyce,	Rhodes,
Cross,	Kelley,	Schell,
Crouch,	Kenny,	Shurtleff,
Davis,	Kleine,	Smith, of 4th District,
Dean,	Laine,	Smith, of San Francisco,
Dowling,	Lampson,	Soule,
Evey,	Larkin,	Steele,
Estey,	Larue,	Stevenson,
Farrell,	Lavigne,	Stuart,
Filcher,	Lewis,	Sweasey,
Garvey,	Mansfield,	Swenson,

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Swing,	Vacquerel,	Weller,
Thompson,	Van Voorhies,	Wellin,
Tinnin,	Walker, of Tuolumne,	West,
Townsend,	Waters,	Wickes,
Tully,	Webster,	White,
Turner,		Wyatt.

ABSENT.

Barbour,	Gregg,	Overton,
Barnes,	Hager,	Porter,
Belcher,	Hale,	Prouty,
Berry,	Hall.	Pulliam,
Boggs,	Harvey,	Reed,
Casserly,	Herold,	Ringgold,
Chapman,	Herrington,	Rolfe,
Cowden,	Howard, of Los Angeles,	Schomp,
Doyle,	Huestis,	Shafter,
Dudley, of San Joaquin,	Keyes,	Shoemaker,
Dudley, of Solano,	Lindow,	Smith, of Santa Clara,
Dunlap,	Martin, of Alameda,	Stedman,
Eagon,	McCallum,	Terry,
Edgerton,	Miller,	Tuttle,
Estee,	Mills,	Van Dyke,
Fawcett,	Moreland,	Walker, of Marin,
Finney,	Neunaber,	Wilson, of Tehama,
Freeman,	Noel,	Wilson, of 1st District,
Freud,	O'Donnell,	Winans,
Graves,	Ohleyer,	Mr. President.

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Messrs. Winans, Shoemaker, and Smith of Santa Clara.

Two days leave of absence was granted Mr. Harvey.

Three days leave of absence was granted Mr. Rolfe.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITIONS.

Messrs. Biggs, Garvey, Burt, Larue, and McComas presented petitions requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

COMMUNICATION.

The Chair presented the following communication:

SAN FRANCISCO, January —, 1879.

To the Honorable Members of the Constitutional Convention, Sacramento:

GENTLEMEN; Why could not a provision be made whereby mining men would be debarred from working hydraulic claims one year out of two, or two out of three, thereby giving the Sacramento River a chance to lower its bed gradually?

I have the pleasure to be yours, very respectfully,

M. DENICKE.

MR. GRACE. I move that it be laid on the table.

MR. BEERSTECHER. I move that it be laid under the table.

PROPOSED AMENDMENT.

MR. SHURTLEFF presented the following amendment, which was ordered to lay on the table and be printed in the Journal:

"Amend section twenty-seven by striking out all after the words 'and county,' in line five, and insert the following: 'unless such county or city and county to be divided shall contain a population greater than the number required to form one or more Congressional Districts. Any county or city and county containing a population greater than the number required for one Congressional District shall be formed into one or more Congressional Districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached, by compact adjoining Legislative Districts, to a contiguous county or counties and form a Congressional District.'"

GENERAL FILE—MILITIA.

THE CHAIR. The Convention will take up the general order, which is the article on militia. The Secretary will read the amendment proposed by the Committee of the Whole to section one.

THE SECRETARY read:

"SECTION 1. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions."

MR. MOFFAT. Mr. President: I offer a substitute.

THE SECRETARY read:

"Except in case of war or insurrection, the amount appropriated for the support of the militia of the State shall not exceed twenty-five thousand dollars annually. The salary of the Adjutant-General shall be two thousand dollars per year."

MR. MOFFAT. Mr. President: I think that is all that is necessary for the benefit of the State—all that is required. I believe that amendment will give enough, and fix the militia just where it ought to be in this State, and if it is adopted it will prohibit all this lobbying here in the Legislature to get local measures through to support the militia of this State. Last year it cost about one hundred and fifty thousand dollars to support the militia of this State. I do not see any necessity of it. I do not see any benefit. I do not see why we should support anything of the kind. If we will adopt the amendment it will set the matter at rest entirely.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I hope that this Convention will not adopt any such limitation as is proposed in the amendment. The militia of this State is its reserved police power, and it is the cheapest police reserve that the State can have. At present, as I understand it, it only costs the State about fifteen dollars per man per year, while each policeman costs an average of over two hundred dollars. Now, the fact that we have this great reserve power in the shape of a police, which we can call out in case of an emergency, is an advantage to the State economically, which we should not overlook. This State at present is sparsely populated to what it will be in the future. At present the expense of the militia is not extraordinary, and if we take the present needs of the militia and make a limitation upon it for the future, we shall do a very unwise thing. The Legislature will constantly have control of this department of the government, and I have no doubt that if it is necessary to reduce it from its present extent of expenditure, that the Legislature will do so. But I certainly think we should make a mistake if in this Constitution we rigidly enforce a limit, and a low limit at that; one that is taken from the present expenditure so as to govern the future. I hope that gentleman will pause, and not place an amendment of this character in the Constitution.

MR. ANDREWS. I rise to inquire whether this is offered as an amendment to be added to the amendment as adopted by the Committee of the Whole?

MR. MOFFAT. As a substitute for the whole article.

THE CHAIR. It is not in proper language to be a substitute.

MR. ANDREWS. I would suggest to the gentleman that he offer that as an amendment to be added to the amendment of the Committee of the Whole.

MR. MOFFAT. I accept that.

MR. ANDREWS. In that shape, I hope that the amendment will be adopted.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: When this subject was before the Committee of the Whole, the committee—very wisely, as I think—determined to adhere to the old Constitution in this particular; not to change the phraseology at all, but to leave the whole subject of the militia entirely at the discretion of the Legislature. We cannot, of course, see very far into the future. We cannot, with certainty, tell what the needs of this State will be at any particular time ahead. We ought not to hamper the Legislature too much. We have, to be sure, sought to bind it down closely in regard to matters where it was apprehended that large moneyed influence and power might be brought to bear, and we have in that class of cases, in my judgment, wisely imposed restrictions upon the legislative power. But so far as this matter of militia is concerned, it is a matter not open to any such objection, and besides we cannot tell what amounts may be proper from time to time. It may be proper, in the judgment of the Legislature, to restrict the appropriations for military purposes to a very small amount or to increase them, according to the condition of things at the time when the Legislature is in session. There may be, for instance, grave reasons to apprehend difficulties of any kind which may require larger appropriations than the amount here specified; on the other hand, it may be wholly unnecessary to appropriate any such amount. I do not think that in this matter we ought to limit the Legislature. I think we ought to adhere to the rule laid down in the old Constitution, leaving it absolutely discretionary with the Legislature to regulate the operations of this department of the government. This amendment was offered on a previous occasion. It was thoroughly discussed. The Convention was then full, and in full Convention a vote was taken upon it and it was determined, by a very decided majority, to adhere to the old Constitution. Now, this morning there is a very small number of members present, and if we reverse the action of the Committee of the Whole the probabilities are that the same question will be brought up again. It undoubtedly will. I see that a large number of the members of the Committee on Military Affairs are absent to-day. I hope that the Convention, being anxious to dispose of its work, will end, so far as may be, discussion upon these subjects which have already been fully discussed in Committee of the Whole. I again express the hope that the Convention will adhere to its previous action.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I was on this committee. The whole matter was quite extensively discussed, and I am under the impression that almost every member of that committee was well satisfied—perhaps there might have been one exception—with what passed in Committee of the Whole. Now, it appears to me that the old Constitution upon this subject is better than anything that we might get up at this time. It leaves the matter in the hands of the Legislature, so that they can suit the exigencies of the times. Anything that restricts them might be a great injury in the future. This matter was taken into consideration and discussed to a considerable length in Committee of the Whole. The members of this House must recollect it, and although it might look very reasonable to restrict the Legislature as to the amount of money that should be appropriated, yet there might be a time when it would prove a serious injury. We all know this. This was taken into full consideration at the time, and it was then voted to leave the Legislature entirely free. I am in hopes that what has been presented by the Committee of the Whole will be adopted here.

MR. HEISKELL. Mr. President: If there is any article that needs a restriction under a constitutional provision it is this article. We have seen the appropriations increased annually for the last two years. The Legislature has appropriated over two hundred and two thousand dollars to this arm of the public service. Now, the gentleman tells us that exigencies may arise, and that a larger amount would be absolutely necessary. That is provided for by the amendment of the gentle-

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man from San Mateo, and I for one believe that the restraining arm of the Constitution should be placed upon that arm of the public service.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: As I have the honor to be a high private in the State militia, I do not know but that it is my duty to say something in defense of the great cause of the State militia. The question is raised, whether a State militia is of any use? A State militia, always well kept and well prepared for offense or defense whenever an emergency may arise, is something like the whip which mothers keep on the high back shelf; it may be necessary to apply it, and it is a very good thing to scare with, and an occasional allusion to it sometimes has a good effect. We who make a Constitution to-day, cannot know the circumstances which may arise in the next hundred years. Perhaps we had better look more carefully in the future, to the men who shall decide what moneys shall be appropriated, than to put into the Constitution such a limitation as may be very injurious to the prosperity and interests of the State at some future time. Twenty-five thousand dollars is not much to serve a State militia with. We have to have places for the companies to meet and drill. Whenever they drill they must wear their United States uniform; if that is so, the State must furnish them, and there is no telling how soon we may need them, and it will be rather too late to make preparations when an insurrection actually takes place, or when a war has actually begun. In time of peace let us be prepared for war.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President and gentlemen: The gentleman says there is no telling how soon we may need them. Well, perhaps, there is not. Probably if President Hayes comes to California we will need them to turn out and escort him. If General Grant should come we might need them to turn out and escort him; but I feel positive that if danger, a riot or an insurrection, comes, although we may need them we shall not find them. Now, my friends, we understand in San Francisco what these fuss and feather soldiers mean. We know what these Sunday parade men mean. If we review the history of this country since eighteen hundred and seventy-six it will be seen that in eighteen hundred and seventy-seven, during the riots that occurred in the Eastern States—at Pittsburgh, at Baltimore, at the various points on the Pennsylvania Central, and various points on the Baltimore and Ohio—that wherever the militia was called out they were prostrate and helpless. They were paralyzed, and the Governors of these several States were obliged to call upon the United States to furnish troops in order to put down the riots and insurrection every time. That wherever the militia appeared upon the scene the consequence was bloodshed and the destruction of property, and the ignominious route and flight of the Sunday soldiers. If the militia had never been thrown into the City of Pittsburgh from Philadelphia the property of the Pennsylvania Railroad Company would stand intact to-day, and over nine hundred railway cars and over one hundred locomotives would not have been destroyed. Just so it was in the City of Baltimore. There was no destruction of property, there was no destruction of life in that city until the Sunday soldiers were called out, and until some member of that body, trembling with fear, fired his musket into the crowd and killed a woman, and then the slaughter and the destruction of property commenced. We do not want these soldiers. If they desire to parade on Sunday, if they desire to march through the streets with their feathers and their plumes they can do so like other independent organizations. We have independent organizations to-day in San Francisco numbering just as large a number of men as the regular militia organization in San Francisco. If anything should occur in this State, the call is for the loyal men of the country; it is for a posse comitatus. The Sheriff can call out the men at any time. The men of California have always been ready to respond to the call of law and order. The men that do respond—the solid men that carry everything before them—are not the men that parade in these holiday clothes, with all this fuss and feathers. I hope that the amendment of the gentleman from San Mateo will prevail. I hope that we will build up a bulwark that will prevent the public funds of this State being diverted in this way to a thing that serves no purpose whatever. The people are able to take care of themselves. There is no analogy between the civil police of the State and this military. We have got to have policemen. This militia is in no sense the police of the State, and never will be. I hope that we will save the State this useless expense.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: It seems to me that if this is to be added to the amendment of the Committee of the Whole, that it is not properly worded. Now, a word in regard to the expense. It is said that the expense of our militia is something enormous. I find by the report of the Adjutant-General for the twenty-eighth and twenty-ninth fiscal years, that the total expense for the two years was seventy-one thousand and twenty-two dollars and five cents, or thirty-five thousand five hundred and nineteen dollars for each year. In the thirtieth and thirty-first fiscal years the expense was ninety thousand five hundred and twenty-eight dollars, or forty-five thousand two hundred and sixty-four dollars each year. It seems to me that with these figures before us it is not apparent that the expenses of the militia is something that may not be borne by this State. It is claimed that the militia cannot be depended upon in cases of emergency; that whenever these great waves of excitement roll over the community, or any portion of it, that it would seem that there was no intention of any harm upon the part of the rioters until they see the militia turn out, and that is like a red flag in a bull fight, and it sets them wild. Now, I want to call attention to the fact that circumstances have arisen of late years which has made it a necessity that there should be some power that could be called upon. It seems to me that it is unwise to leave this matter so that it cannot be made flexible. It is not only in times of war that these expenses need to be incurred, but the Legislature only meets once in two years. Suppose they are limited to an expense of twenty-five thousand dollars a year, and the Legislature meets and provides for that? There is no opportunity, except by an extra session of the Legislature, to provide for any emergency.. They are limited to twenty-five thousand dollars a year without knowing what may happen or what is before us. We have placed an iron rule about this that we cannot go beyond. I think it is unwise. I know that in many cases, if there was an efficient militia that could be utilized at once, it would be a great benefit. There are portions of this State where it is a necessity that troops of some kind should be at hand, where they can be called upon. As I said in a discussion in the Committee of the Whole, in my own county, whenever the United States troops are withdrawn from there, in almost every instance it has been found necessary to organize the militia and take it out, because the absence of the troops encourages these borderers that are down there upon the line ready to come in at any time whenever they think it is safe. In almost every instance companies have been called out, and it has not been all boy's play, neither. We had not been able to get along with fuss and feather soldiers on that southern line. Sir, I think it is safe to leave this as it is.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: I am in favor of this amendment. Now, it occurs to me, sir, that the opponents of this amendment reason from a sophistic basis, or rather predicate their arguments upon a false basis. The arguments are on the basis, that in case of a war, or insurrection, or rebel invasion, that it is necessary. Now, I call the attention of the Convention, that the amendment itself uses the words, "except in cases of war or insurrection." These gentlemen are somewhat inconsistent. After voting for the salary of the Governor of this State to be reduced to five thousand dollars, and the salary of members of the Legislature to five dollars a day, it is not consistent in them to support a measure that will require from fifty thousand dollars to one hundred thousand dollars a year to keep up the militia. There is no consistency in this. I hope that the gentlemen will consider the position that they have occupied heretofore in regard to other financial matters of this State. I think this amendment is right and proper. Twenty-five thousand dollars a year is ample. It is a greater amount than two thirds of the States require.

MR. BLACKMER. If the gentleman refers to me in speaking of reducing the salary of the Governor, I wish to say that I did not vote for five thousand dollars.

MR. AYERS. Nor I.

MR. TINNIN. Some of the gentlemen who have spoken on this floor I know did vote that way.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: The amendment is not as I would like it. We are giving them too much. I would like to reduce it to ten thousand dollars. I tell you that this militia is just as useless as five wheels to a wagon. There is no need of it. It is all fuss and feathers, and Sunday soldiers, and is no good. It is just a Sunday show—a dazzling fraud. It is kept up to make a show when some big man comes here like the Kanaka king. They spend their money in these idle shows.

MR. AYERS. Does the State pay for these shows?

MR. GRACE. I do not say who pays for them. It is this kind of men that go in for spending money.

MR. AYERS. They spend their own money.

MR. GRACE. I want to say that I am doing this for a record. I want it to go on the record as being opposed to it. It is useless. They spend the money for nothing. They are of no use. They never did any good. Now, sir, if it comes to war, if there is anything to do we are all soldiers. If there is anything up in the country, every man, when it comes to danger—that is, a true American—will rush to the front. The man that don't do it has no right to live in the country. They will all do it. One thing that the militia done that is to their credit, was that they smashed the riot on Sutter Creek. I am in favor of giving them less. I do not believe in doing this for the purpose of seeing a few high-toned gentlemen wearing fine clothes and feathers.

MR. WATERS. Mr. President: Inasmuch as gentlemen are only using arguments that have already been used three or four times, I move the previous question.

Messrs. Tully, White, Hunter, and also Dean, demanded the previous question.

Upon ordering the main question, the ayes and noes were demanded by Messrs. Vacquerel, West, Evey, Condon, and Cross.

The roll was called, and the Convention refused to order the main question put, by the following vote:

AYES.

Andrews,	Heiskell,	Smith, of 4th District,
Beerstecher,	Hitchcock,	Stevenson,
Brown,	Hunter,	Stuart,
Campbell,	Johnson,	Swenson,
Charles,	Joyce,	Swing,
Condon,	Lampson,	Thompson,
Cross,	Larkin,	Tully,
Davis,	McComas,	Walker, of Tuolumne,
Dean,	Moffat,	Waters,
Evey,	Murphy,	Wellin,
Filcher,	Nason,	West,
Gorman,	O'Sullivan,	Wyatt—36.

NOES.

Ayers,	Barton,	Biggs,
Barbour,	Bell,	Blackmer,

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Boucher,	Kelley,	Rhodes,
Burt,	Kenny,	Schell,
Caples,	Laine,	Shurtleff,
Crouch,	Larue,	Smith, of San Francisco,
Dowling,	Lavigne,	Soule,
Estey,	Lewis,	Steele,
Farrell,	Mansfield,	Sweasey,
Garvey,	Martin, of Santa Cruz,	Tinnin,
Glascock,	McConnell,	Townsend,
Grace,	McCoy,	Turner,
Harrison,	McFarland,	Vacquerel,
Holmes,	McNutt,	Van Voorhies,
Hughey,	Morse,	Webster,
Inman,	Nelson,	Weller,
Jones,	Reynolds,	White—51.

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from San Mateo.

MR. BIGGS. Mr. President: I hope the amendment will not be adopted. I think this Convention perhaps had better go a little slow. I think there has been plenty of money misappropriated to the militia of the State, but I think we had better leave this power to the Legislature. I have been in favor of leaving something to the Legislature. They will be better qualified to know what appropriations to make than we are. I do feel a little proud of our militia, and I do not think if it is necessary to do a little fighting they will run away. I think they have been an advantage to this State in keeping law and order. I believe that it is our duty to leave these matters to the Legislature. I shall vote against the amendment.

Upon the adoption of the amendment of Mr. Moffat, the ayes and noes were demanded by Messrs. Beerstecher, O'Sullivan, Filcher, Moffat, and Joyce.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Harrison,	Nason,
Barbour,	Heiskell,	Nelson,
Barry,	Hitchcock,	O'Sullivan,
Barton,	Holmes,	Reynolds,
Beerstecher,	Hughey,	Smith, of San Francisco,
Bell,	Hunter,	Soule,
Condon,	Kelley,	Sweasey,
Davis,	Kenny,	Swenson,
Dowling,	Laine,	Tinnin,
Evey,	Larkin,	Wellin,
Farrell,	Mansfield,	West,
Filcher,	McComas,	White,
Gorman,	Moffat,	Wyatt—41.
Grace,	Morse,	

NOES.

Ayers,	Johnson,	Steele,
Biggs,	Jones,	Stevenson,
Blackmer,	Joyce,	Stuart,
Boucher,	Lampson,	Swing,
Brown,	Larue,	Thompson,
Burt,	Lavigne,	Townsend,
Campbell,	Lewis,	Tully,
Caples,	Martin, of Santa Cruz,	Turner,
Charles,	McConnell,	Vacquerel,
Cross,	McCoy,	Van Voorhies,
Crouch,	McFarland,	Walker, of Tuolumne,
Dean,	McNutt,	Waters,
Estey,	Murphy,	Webster,
Garvey,	Rhodes,	Weller,
Glascock,	Schell,	Wickes—47.
Inman,	Shurtleff,	

THE CHAIR. The question is on concurring in the amendment offered by the Committee of the Whole.

The amendment was concurred in.

THE CHAIR. The next question is on concurring in the recommendation of the Committee of the Whole, to strike out section two. The Secretary will read the section.

THE SECRETARY read:

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

The recommendation of the Committee of the Whole was concurred in.

THE CHAIR. The question is on concurring in the recommendation of the Committee of the Whole, to strike out section three. The Secretary will read the section.

THE SECRETARY read:

"SEC. 3. No general officer shall be removed from office except by the Senate, on the recommendation of the Governor, stating the grounds on which removal is recommended, or by a decision of a Court-martial in accordance with military custom. No officer of the militia shall ever be removed from office for political reasons."

The recommendation of the Committee of the Whole was concurred in.

THE CHAIR. The question is on concurring in the recommendation of the Committee of the Whole, to strike out section four.

THE SECRETARY read:

"SEC. 4. The Governor shall be Commander-in-Chief of the militia of the State. He shall have power to call them forth to execute the laws of the State, to suppress insurrections and repel invasions."

The recommendation of the Committee of the Whole was concurred in.

THE CHAIR. The question is on concurring in the recommendation of the Committee of the Whole, to strike out section five.

THE SECRETARY read:

"SEC. 5. The officers, musicians, and members of the State militia, who comply with all military duties as provided by law, shall be entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty, and exemption from serving on any posse comitatus. All officers, non-commissioned officers, musicians, and privates, who have faithfully served in the military service of the State for seven consecutive years, and received the certificate of the Adjutant-General certifying the same, shall thereafter be exempted from further military or jury service, except in time of war."

The recommendation of the Committee of the Whole was concurred in.

THE CHAIR. The question is on concurring in the recommendation of the Committee of the Whole to strike out section six.

THE SECRETARY read:

"SEC. 6. Every officer or member of the State militia, wounded or disabled in the service of the State, shall have reasonable expenses paid him; and the widows and children of members killed in the service of the State shall be provided for by the Legislature."

The recommendation of the Committee of the Whole was concurred in.

MR. MANSFIELD. I offer a new section to this article.

THE NATION'S FLAG.

THE SECRETARY read:

"All military organizations provided for by this Constitution or any law of this State shall, while under arms, either for ceremony or duty, carry no device, banner, or flag of any State or nation except that of the United States, or of the State of California."

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I hope, sir, that that amendment will be adopted by this Convention. I have no objection whatever to gentlemen who are American citizens of foreign birth representing their love of home by carrying the flags of their nation upon private civic occasions. I appreciate the love which every man has for the country in which he was born. It is a sentiment second only to our love for the mothers that bore us. But it seems to me that gentlemen of foreign birth should not desire to carry the flag of a foreign nation in the organized military department of this State. It would be a strange spectacle to see the organized military power of the State of California, paid out of its public treasury, carrying so many flags that a stranger could not tell to what country they belonged. Now, it seems to me that the organized militia of the State should carry the flag of this country, and no other. I do not see why it should be asked that foreign flags should wave over our military organizations. I do hope that this amendment will be adopted.

MR. BEERSTECHER. Mr. President: As the section stands amended I shall vote aye, because I understand from the reading of the section that it relates merely to those military companies organized under the laws of the State—that is to say, regular militia organizations—and it does not refer to independent companies.

MR. AYERS. I would ask the gentleman if there is not a provision similar to that in the code now?

MR. BEERSTECHER. Yes. I do not understand that it refers to independent organizations; if I did understand that it referred to independent military or civic organizations, I certainly should never vote for it.

MR. MCCONNELL. I understand that you want another military power besides the regular force organized by law.

MR. BEERSTECHER. If I am in an independent organization, I am going to carry just what flag I desire. I shall carry the flag of the United States, and any other banner in connection with that. I desire to think that every citizen in the State has a right to carry any other device, but always carrying the flag of the United States.

MR. JOYCE. Mr. President: I view the matter differently from what the gentleman who preceded me does. I believe that every military company in this State is organized militia. I consider, whether independent or otherwise, they are organized militia, consequently I cannot vote for it.

MR. CONDON. Mr. President: I am opposed to the amendment from the fact that the amendment that was previously voted down was voted down because it was claimed by the members of this Convention that that was a matter to be left to the Legislature. Now, as has been asserted on this floor, the statute provides fully for that now, and I think it is safe to trust the Legislature with that matter, consequently I hope that the amendment will be voted down, and that the article, as amended now, will stand, and be adopted by the Convention.

MR. VACQUEREL. Mr. President: I hope the amendment will prevail. I am a foreign born citizen myself, but when I have sworn allegiance to a country I mean what I have sworn; I do not mean to swear one thing and do exactly the contrary. I do not see the use of leaving that to the Legislature, because, so far we have not been willing to trust the Legislature in anything, and while we do not want to trust it in one thing I do not see why we should trust it in anything. If there are no decent men in your Legislature, we do not want to leave anything to them. Let us do everything, so that the men who follow us will have nothing to do. I hope the amendment will be adopted.

MR. INMAN. The gentleman has about made my speech. It is very astonishing how the opinions of these gentlemen fluctuate in regard to the Legislature. One day they cannot trust it to do anything, and the next day it is competent to do everything. I hope that gentlemen who belong to independent military companies will be allowed to carry no other flag or device than that of this country. Gentlemen talk about

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their patriotism, and yet they refuse to march under the American flag. I do not like such patriotism. I do not like such love of country. If a man is an American citizen he cannot object to the American flag. I hope that this amendment of the gentleman from Los Angeles will be adopted unanimously.

MR. WHITE. Mr. President: I hope that the amendment will be adopted just as the gentleman from Los Angeles has proposed it. I believe that when a company is organized at the expense of the State that it is entirely improper to carry any other flag, and it appears to me that it is perfectly proper to carry the United States flag and nothing else by these companies organized and paid by the State. Of course companies outside of that are not really recognized as belonging to the State militia, and they can wear any uniform they like. They are merely at play, like children, and they can do just exactly as they like. But when they are organized in the State militia they have no business carrying any other flag, and I trust the amendment will be adopted.

MR. BEERSTECHER. Mr. President: I have an amendment that I would like to offer.

THE SECRETARY read:

"Add after the word 'State,' in second line, 'and receiving State support.'"

MR. BEERSTECHER. I ask the gentleman to accept that amendment.

MR. MANSFIELD. No sir.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. I have a right to speak to my amendment. The additional section, as offered by General Mansfield, reads as follows:

"All military organizations provided for by this Constitution, or any law of this State, shall, while under arms, either for ceremony or duty, carry no device, banner, or flag of State or nation, except that of the United States or of the State of California."

My amendment will make it read in this way:

"All military organizations provided for under this Constitution, or any law of this State, and receiving State support, shall, while under arms, either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California."

Now, gentlemen, I ask you in justice. in the name of reason, why should we put into this Constitution, that if a body of men associate themselves, use their own money, procure guns, procure arms, if you please, form themselves into a cavalry or artillery company, for display, they shall not be allowed to carry the flag of any other country, providing they also carry the flag of the United States? What is the objection to it? They are just as good citizens of the United States. They are an independent organization. There may be force, and there is force in the argument, that if they appear in parade or otherwise, as State troops, as a portion of the armament of the State or the United States, that they should carry nothing but the flag of the United States, and no other device. But where they are an independent organization, composed of an aggregation of men, why should they not be allowed to carry other devices and other banners? No one can stop an individual; no one can prevent me from marching down Kearny street and carrying the flag of any nation, or any device. What is the difference if a half dozen or ninety-nine other men happen to walk down that street with me? Why should we say that then I should not be allowed to carry any other flag than that of the United States?

MR. MANSFIELD. Could you march down Kearny Street as a representative of the United States Government and carry any other flag?

MR. BLACKMER. I would like to ask the gentleman whether he considers that an organization of that kind is provided for in this Constitution?

MR. BEERSTECHER. It may be. It may include every manner of military organization, whether under the State or private. As the gentleman from Los Angeles says, if I march through the street as the representative of this State and the United States, then I ought certainly to carry the colors of this State and the colors of the United States and no other colors. But, if I am independent—if I belong to an independent organization—there is no justice in saying that I should carry nothing but the colors of the United States. I believe in the United States and its flag, which I revere and honor. It is the one flag I would fight for; it is the only colors I would fight for, but at the same time I do not desire to say that other flags shall not be carried by other independent organizations.

MR. REYNOLDS. I would like to ask the gentleman if the flag of the United States is the only flag he would fight for, why does he trouble himself so about other flags?

MR. BEERSTECHER. I will answer that question. Because I believe, sir, that the citizens of this country, sir, should have liberty in this matter as well as in other matters. If you desire to be narrow-minded, exclusive, and bigoted, then vote to bind down these men to carry only one color and one flag.

MR. SCHELL. I would ask the gentleman if he believes that any set of men ought to have the right to organize an independent organization in this State which shall not be subject to constitutional and statutory law, and carry such flag and device as they please, irrespective of such law.

MR. BEERSTECHER. Certainly not. Every citizen of the State is subject to the laws of the State. As you well know, as a lawyer, every citizen of this State is subject to be called upon by the Sheriff in a posse comitatus.

MR. SCHELL. I do not know as they carry any flag, even the Stars and Stripes.

MR. WILSON, of Tehama. Haven't you known blood shed right in the streets by factions that have disagreed in the old countries, carrying different flags? Now, we want to prevent that.

MR. BEERSTECHER. Yes, I have—the Orangemen and Catholics. You might as well flaunt a red flag in the face of a mad bull.

MR. WILSON, of Tehama. If they want to vent their patriotism for their own flags, let them go back to their own country. I don't propose to allow them to march in our streets and fight their old country troubles out.

MR. BEERSTECHER. That has nothing to do with the right to carry it.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I am a little sorry to hear these gentlemen talk so violently, and get their passions worked up to such a point over this little matter. To me this is a very plain matter. The provisions of the Code distinctly define what colors shall be carried by the militia. I do not know what the gentlemen want any more than that. Those who are willing to shoulder arms for the country have not complained about this, and I think it is very well as it is. I am a little surprised to see the storm here, as though this was a wild secession movement; as though the foreign element were going to run off with the country. Why don't the gentleman tell us of some hardship upon the people? It has been going on for a hundred years. The people from the European countries have been proud to carry their national flag upon national celebrations, and on excursions, at funerals, and on various occasions, while not directly under the command of the national forces. I ask where any hardship has ever resulted from it?

MR. WILSON, of Tehama. You have known blood to be shed?

MR. WELLIN. I have never known it. I have lived here since I was sixteen years of age. I have lived in the City of New York, and many of the large cities in the Western and Southern States, and I have never seen a blow struck nor a high word about the carrying of these flags on celebration days or upon excursions—never in my life. If these gentlemen say that injury has come by the carrying of these flags let them name the time and the place. I remember well when I saw many of these foreign flags marching down the streets of New York City in the year eighteen hundred and sixty one. I have no flag of any of these countries. The American flag is good enough for me. It is good enough for anybody, but I maintain that if a company organizes and keeps itself independent, if they wish to go upon a celebration or picnic and carry the starry banner upon their right and some other flag or device upon their left, I fail to see where the injury is going to come in. No one has ever objected to it. These flags have been carried by these foreign companies, and the privilege has never been abused; therefore I do not see why this cry should be raised against it. It is a very trifling matter, and I doubt the sincerity and the good, sound judgment of any man who stands upon this floor and who talks against us because we love to honor our native land. I fail to see why we can be looked upon with suspicion. I fail to see the ground of the argument. I call upon those who oppose it to tell me where the privilege has ever been abused, or where the American flag has ever been slighted, or where these men have ever failed to defend the American flag when the occasion offered.

MR. MANSFIELD. What became of the American flag at the time of the riots in New York City in eighteen hundred and sixty-three?

MR. WELLIN. I remember well that many of those very people who defended the flag in putting down that riot, were men of foreign birth. It is folly to raise this question unless you can show that there has been some positive injury resulting from the carrying of these flags. This is no argument against it. Some men have dragged the flag of the United States in the dirt and they were not foreigners either. I have known men in the Southern States to drag it in the dirt and they were not foreigners. I appeal to the whole history of the country to show that no injury has ever resulted from the carrying of these flags.

MR. WILSON, of Tehama. Where you came from do they allow it?

MR. WELLIN. That is the reason I left it. That is why we fight for this country, because it grants us these privileges. But if our liberty is to be taken away what will we have left? Very little more than we had in the land we have abandoned.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: If the Convention concludes to meddle with this matter at all, I hope they will adopt the amendment proposed by my colleague, Mr. Beerstecher. The theory upon which the State could control the matter at all would be that the State has contributed to the support of these organizations. If the intent is to regulate the sort of banners which private organizations shall carry, we ought, to be consistent, to make it apply to civic as well as military processions, because on the theory of gentlemen here the excitement and hostilities of race, etc., it would be as proper to restrict the carrying of religious banners, to restrict the carrying of political banners, to restrict the carrying of every kind of motto or device which may excite riots or disturbances of the peace. But the State undoubtedly can control and declare what kind of banners shall be carried by organizations which it supports, and the qualification is proper.

Now it seems to me that this is an attempt to excite feeling and put men on the record, as they call it, as to loyalty. I have no desire and I have no purpose at all to belittle or underate the flag of my country. I have never been so low down, in all my vagabond career—although I have felt even as though I did not want to see the face of man—that when I saw that flag waving in the air I did not feel a new throb of the heart. I love it! I recognize, also, as a justifiable emotion that our adopted fellow citizens may, compatibly with their duties as citizens of this Republic, still have some lingering affection for the country of their birth; and that it may still, consistently with their duties as American citizens, rouse in their hearts some of the same emotion occasionally to see the flag of their own country. Now we are threatened with no danger to our institutions from anything of that kind. I maintain that it is not the place for this in the Constitution, and we should not come down and meddle with all these matters. Let the militia, supported by

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the State, carry the flag of the United States and I am willing to vote for that. Let it carry the flag of California, and I am willing to vote for that. Further than that I do not believe we should meddle with the matter.

REMARKS OF MR. HARRISON.

MR. HARRISON. Mr. President: I am opposed to the amendment and I hope it will be voted down. If it goes into the Constitution it will never be enforced in San Francisco, for this reason: The man that enforced it, he would never run for a public office there. I belong to a private company. We have equipped ourselves at our own expense. We have never carried anything but the American flag, but if we felt like carrying any other flag I do not see why we should be prevented. I consider that I am as good a citizen as any of these gentlemen. I came from a despotic country, sir, and I never want to see the flag of my country flying in this country. It is not at the head of any military company, and I never want to see it here. I never want to import any of the despotic ideas of that country into this. I hope the amendment will be voted down.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. President: I think, sir, with Mr. Wellin, that there is a needless ferment made over this matter; I do not see why the matter should have been brought up. I yield to none in my devotion to the flag of my country. When it was carried forward during the late war, I looked for victory to crown it, and I prayed for victory to crown it. I remember, sir, when I was a boy of sixteen, when I stood upon the wharf at Aspinwall, hearing around me nothing but a strange gibberish, feeling like a stranger in a strange land, I remember that I looked out upon the broad ocean and I saw the sails of a vessel in the distance, rising upon the arc of the horizon. It rose up until the hull of a vessel was conspicuous; it came on like a thing of life and beauty, all its lines glittering in the sunlight. Up to its gaff rose a ball of bunting, hesitated in the air a moment, then unfolded itself in the breeze; it was the banner of my country. Forth from the guns flashed the fire, and they roared in thunder tones a salutation to that flag. Then, I have great reason to cherish my country's flag, for that episode in my vagabond life made an impression upon me which can never be effaced. But I also remember that the brave Sixty-ninth New York, at the battle of Bull Run, carried the harp and sunburst flag with the American banner, and it did not detract from their valor nor the devotion with which they fought on that bloody day, for they left two thirds of their number upon that sanguine field. Therefore I say that I see no reason for the section, and I shall vote against it.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: It occurs to me that this is a rather strange line of debate. I followed my friend, Beerstecher, in Committee of the Whole, and voted against the resolution prohibiting the carrying of these little flags and emblems of citizens who were born in different countries. It seems that he has changed front this morning, but that is no reason why I should do so. I do not propose to follow him in his summersaults. I do not see what harm, or why any American citizen can be opposed to any regiment, whether it is under the control and support of the State, or whether it is a private company, or any man, carrying along with the American flag the banner of some country in which perhaps he was born. He simply says to the American people: I was born and raised an Irishman, or a German, and I have forsaken that country, and come here and sworn my allegiance, and I am proud of the fact. I think, sir, that there were instances in the late war where the flags of different countries and the American flag were carried together. I do not remember any instance where any man objected to that condition of things; I do not remember any place in the history of the late civil war, where the green flag, or the German flag, was combined with the American flag, where any soldier, or any citizen, or anybody said: Take down that foreign flag before you go into battle. I think that the principle that would exclude, and that would prevent, and prohibit any man from manifesting his love for his mother country, is narrow and bigoted. That is my feeling about that. Show me a man that does not love his native land and country where he was born, and I will show you a man that will not make a good American citizen. He may hate the tyranny of the institutions of the country from which me emigrated, but that he can fail to have a kindly feeling for the land in which he was born I do not believe. Now I am not afraid of the record in this case. I am perfectly willing to go on it as voting against all these amendments; perfectly willing to let any military company, or any regiment, if they so desire, combine with the American flag the flag of their native country.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: I desire to say something on this subject, as a naturalized citizen. I have been in the United States for forty years; came here as a boy. I left my native land, and I consider myself as good an American citizen as any gentleman on this floor. I love the American flag as much as any gentleman here. I have fought under that flag, and am ready to fight under it again, when called upon, or when necessary. But I cannot see any great harm in foreign born citizens carrying the emblems of their native lands. Love of native land is a sacred sentiment. I despise a man that does not love his native land. So does every true man. This sentiment has hitherto been respected by the American people. Our government, in the late civil war, did not forbid naturalized citizens, when formed into distinctive regiments, from carrying the flags emblematic of their nativity. Irish and German regiments were welcomed into our army, and were not denied the privilege of carrying these emblems of their native land. This proposition is narrow, and smacks of Knownothingism, and nothing else. That is what it is. I am inclined to favor Mr. Beerstecher's amendment; but if it is rejected, then I shall vote against the whole section proposed by the gentleman from Los Angeles.

MR. BIGGS. Mr. President: "Long may it wave o'er the land of the free, and the home of the brave!" I move the previous question.

Messrs. Lampson, Wilson, of Tehama, Condon, and Cowden, also demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. Beerstecher, the ayes and noes were demanded by Messrs. Beerstecher, Grace, Bell, Condon, and Gorman.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Gorman,	Ohleyer,
Ayers,	Grace,	O'Sullivan,
Barbour,	Harrison,	Reynolds,
Barry,	Hitchcock,	Smith, of 4th District,
Barton,	Hunter,	Smith, of San Francisco,
Beerstecher,	Johnson,	Soule,
Bell,	Joyce,	Sweasey,
Biggs,	Kenny,	Swenson,
Brown,	Larkin,	Tinnin,
Burt,	Lavigne,	Tully,
Caples,	Mansfield,	Walker, of Tuolumne,
Condon,	McCoy,	Waters,
Cross,	Moffat,	Webster,
Davis,	Morse,	Wellin,
Evey,	Murphy,	Wickes,
Farrell,	Nason,	White,
Filcher,	Nelson,	Wyatt—52.
Garvey,		

NOES.

Blackmer,	Laine,	Steele,
Boucher,	Lampson,	Stevenson,
Campbell,	Larue,	Stuart,
Charles,	Lewis,	Swing,
Crouch,	Martin, of Santa Cruz,	Thompson,
Dean,	McComas,	Townsend,
Estey,	McConnell,	Turner,
Glascock,	McFarland,	Vacquerel,
Heiskell,	McNutt,	Van Voorhies,
Holmes,	Rhodes,	Weller,
Inman,	Ringgold,	West,
Jones,	Schell,	Wilson, of Tehama—38.
Kelley,	Shurtleff,	

Upon the adoption of the section as amended, the ayes and noes were demanded by Messrs. Holmes, Martin, of Santa Cruz, Townsend, Farrell, and McFarland.

The roll was called, and the section adopted by the following vote:

AYES.

Andrews,	Hunter,	Shurtleff,
Ayers,	Inman,	Smith, of 4th District,
Barbour,	Johnson,	Soule,
Barry,	Kleine,	Steele,
Barton,	Laine,	Stevenson,
Beerstecher,	Lampson,	Stuart,
Bell,	Larkin,	Sweasey,
Biggs,	Larue,	Swing,
Blackmer,	Lavigne,	Thompson,
Boucher,	Lewis,	Tinnin,
Brown,	Mansfield,	Townsend,
Burt,	Martin, of Santa Cruz,	Turner,
Caples,	McComas,	Vacquerel,
Charles,	McConnell,	Waters,
Cross,	McFarland,	Webster,
Crouch,	Morse,	Weller,
Davis,	Murphy,	Wellin,
Estey,	Nason,	West,
Evey,	Nelson,	Wickes,
Filcher,	Ohleyer,	White,
Garvey,	Reynolds,	Wilson, of Tehama,
Hitchcock,	Rhodes,	Wyatt—68.
Holmes,	Schell,	

NOES.

Campbell,	Harrison,	O'Sullivan,
Condon,	Heiskell,	Ringgold,
Dean,	Jones,	Smith, of San Francisco,
Dowling,	Joyce,	Swenson,
Farrell,	Kelly,	Tully,
Glascock,	Kenny,	Van Voorhies,
Gorman,	Moffat,	Walker—22.
Grace,		

THE CHAIR. The question is: Shall this article be engrossed and read a second time?

So ordered.

WATER AND WATER RIGHTS.

MR. BARBOUR. Mr. President: I send up a proposition that I would like to have printed and considered.

THE SECRETARY read:

"SECTION —. The rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any county, city and county, or city or town, or the inhabitants thereof, shall be fixed annually by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such county,

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or city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water rates, when necessary, within such time, shall be subject to peremptory process, to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation, collecting water rates in any county, city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation, to the county or city, city and county, or city or town where the same are collected, for the public use."

MR. BARBOUR. Mr. President: I move that it be printed.

So ordered.

LEGISLATIVE DEPARTMENT.

THE CHAIR. The next measure on the file is the article on Legislative department. The Secretary will read the amendments reported by the Committee of the Whole.

THE SECRETARY read all of the amendments, and then the amendment to section two, as follows:

SESSIONS OF THE LEGISLATURE.

"SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday after the first Tuesday in January next ensuing the election of its members, at twelve o'clock M., unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except the first session called after the adoption of this Constitution, which may be allowed pay for one hundred days. And no bill shall be introduced, in either House, during the last ten days of the session, without the consent of two thirds of the members of said House.

MR. BARRY. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out 'sixty,' in line five, and insert 'eighty;' and add after 'hundred,' in line seven, the words 'and twenty.'"

MR. BEERSTECHER. I second the amendment.

REMARKS OF MR. BARRY.

MR. BARRY. MR. President: If this Constitution is adopted, I believe there will be so much work for the Legislature to do that it will be impossible to do it, in my opinion, in less than one hundred and twenty days, and I think we ought to allow at least that time. I believe that the first session ought to be at least one hundred and twenty days, although it is possible that one hundred days might do. This is more necessary owing to the fact that it is provided here that no bill shall be introduced, during the last ten days of the session, without the consent of two thirds. Hasty legislation has been the cause of a great many bad laws on the statute books, and in order to prevent that, we ought to give them a reasonable time; I therefore think that this is indispensable.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: I hope that the amendment will not prevail. Now, sir, we have, by the limitations with regard to special legislation, cut off at least two thirds of the work of the Legislature. I believe that those gentlemen who have been members of the Legislature will bear me out in that assertion. If it may be presumed that the special and local laws passed by the ordinary Legislature consume time in proportion to the number of bills, then, sir, the session of the ordinary Legislature, under this Constitution, would not be over thirty days. I think that sixty days will be ample when we take into consideration that their deliberation will be confined almost entirely to general laws, when we once get in running order under this Constitution. I do not know but that one hundred and twenty days might be wise for the first session, or a longer time than we have provided; and yet we have provided in the schedule for annual sessions for the first two years. I think that two sessions coming so close together will obviate the necessity of an unusually long session immediately after the adoption of the Constitution. This matter was thoroughly considered by the Committee of the Whole; it was well considered in the Committee on Legislative Department, and I believe the conclusion arrived at was a wise one. Some concession was made—some additional time was added in Committee of the Whole to the time reported by the Committee on Legislative Department—and it was thought that ample time had been added, and I believe it has. I hope no further concessions in this direction will be made. Take, for instance, the experience of other States. There are very few of them, the sessions of whose Legislatures continue as long as we have provided for. In many of the older States—to be sure, they have annual sessions—they last but from twenty to thirty days on an average. I believe, especially as there will be but very little for the Legislature to do, that sixty days will be ample.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I hope that the amendment will not prevail. All that we have done in this section is simply to limit the pay for a certain length of time. If the public interests should require a few days longer, of course the members can give it. We know that we will take out this local legislation, and four fifths of the legislation has been upon local matters. This is about the only thing in all our work in which we have at all looked to the side of economy. In everything else it will be found that we have gone into extravagance. We have added to the expense of the State very largely in many things now unnecessary to enumerate. This is the only place where we have shown a disposition to economize. All these changes that are talked about will be only a matter of a few simple changes in the Code. We have a code of laws sufficient for this State; in fact, so many laws have been the curse of the State, just as it was the curse of this Convention, to allow people to introduce amendments here by the bushel. Let us get through with our work and go home, and not continue introducing and discussing amendments which have already been acted upon.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: If it be the intention of this Convention to adopt section twenty-five, as reported by Committee of the Whole, and I take it for granted that that is the intention of the Convention, I believe that gentlemen on this floor, as well as the people of the State of California, are in earnest in favor of curing this evil of special legislation. I believe the country is in earnest, and I believe that this Convention is in earnest in curing that great radical evil. If so, and we are prepared to adopt section twenty-five, cutting off all special legislation, the time agreed upon in Committee of the Whole, sixty days, except for the first session, which is allowed one hundred days, is amply sufficient. This subject was thoroughly discussed in Committee of the Whole in all its bearings, and section two, as reported by that committee, is the result of a thorough discussion and deliberation on the whole question, in connection with our probable and intended action in regard to cutting off special legislation, and I submit that the time is amply sufficient.

The records of former Legislatures show that more than two thirds of all the time consumed has been consumed in special legislation. Now if we cut that off, sixty days is enough, and more than enough. While it may not be of general interest to this Convention, I will say that in the Legislative Committee it was earnestly urged by some there that forty days would be amply sufficient, and that the committee in fixing upon sixty days considered that they were allowing not only enough, but more than enough time; that was the deliberate conviction of every member of that committe. That sixty days was enough it was agreed upon heartily, and the Committee of the Whole concurred, except in the matter of the first session, which was extended from eighty to one hundred days. I believe, notwithstanding that I agreed to eighty days in the committee, that the amendment made in the Committee of the Whole was a wise one; because, in the first session there will necessarily be a large amount of work to do that will not be necessary in subsequent sessions. Therefore I am glad that the amendment was made in the Committee of the Whole. I believe it was a wise amendment, and I hope that this Convention will stand by the report of the Committee of the Whole.

MR. ANDREWS. I would like to inquire whether the question is susceptible of division.

THE CHAIR. The Chair thinks it is divisible.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: The first question will be on striking out "sixty" and inserting "eighty," and then on striking out "one hundred" and inserting "one hundred and twenty." I think that sixty days is sufficient after the first session, but I do not believe that one hundred days is sufficient for the first session after the adoption of this Constitution.

MR. FILCHER. I will remind the gentleman that we have cut out the usual holiday recess.

MR. ANDREWS. I am aware of that, but if the gentleman will look at the work that will have to be done at the first session of the Legislature under this Constitution, he will see that it will have to be a thousand per cent. better working body than this Convention has been in order to accomplish it. I am in hopes that, the question being divided, the motion to strike out "sixty" and insert "eighty" will be voted down, and the motion striking out "one hundred" and inserting "one hundred and twenty" will be sustained.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I offered an amendment to this section in Committee of the Whole, that provided for the payment of five hundred dollars to each member of the Legislature for the session. This section, under the limit, will amount to four hundred and eighty dollars after the first session. I cannot see the necessity for more than eighty days for the first session. Under the amendments I proposed there would be no limit to the number of days, and I think the pay sufficient for any Legislature. I think the changes more imaginary than real. We have a Code, and there will be very few Acts necessary to change. We will hold a session of the Legislature, if the Constitution is adopted, in January next. We will hold another session of the Legislature one year after that time, so if there are any mistakes they will be easily remedied at the next session of the Legislature. I hope that this Convention will stand by the report of the Committee of the Whole, which was duly considered—more thoroughly considered than any other report of this Convention.

MR. ANDREWS. Do you take into consideration the changes necessary to be made in relation to county organizations? Changes will have to be made in regard to the organizations of county governments. There will have to be a uniformity in the system.

MR. LARKIN. That will be a general law. One bill will cover that. As Mr. Filcher, of Placer, said two thirds, and even three fourths, of the bills submitted are local and special Acts. Under this Constitution none but general laws will be considered by the Legislature. Probably forty or fifty general laws will be passed by the Legislature, and there will be ample time in the eighty days to pass what laws are necessary after the adoption of the Constitution, and to do all of the business that may arise from the change in the Constitution. Another thing that will expedite business under this Constitution: Heretofore they met in December and adjourned for the holidays, so that they did not get down

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to work until about the tenth of January. Under this Constitution the Legislature will meet the second Monday in January, and they can at once proceed to business. There will be no excuse for delay. They will proceed at once to work. I hope the Convention will stand by the report of the Committee of the Whole.

MR. BIGGS. Mr. President: I would ask gentlemen to remember one thing. Our Legislature meets annually for two sessions, and we have done away with all our local and special legislation; consequently this is ample time, and I am very much in hopes that the report of the Committee of the Whole will be adopted.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I have no particular interest in this matter of short or long sessions of the Legislature, any further than this: At the time when the Committee of the Whole fixed the period which the first session of the Legislature might sit and draw pay, we did not understand what amount of work was going to be laid out for the first session of the Legislature. Now, sir, we all fully realize the inconveniences which have been thrown about this body by reason of the Legislature making a limit upon our time; and, sir, some future Legislature may realize the inconvenience of not having sufficient time to perform their work. Let us see what this first session of the Legislature, limited to one hundred days, has to do. We have provided first for a Railroad Commission—for a bare skeleton—that there shall be a Railroad Commission. We have said that the Legislature shall make the laws which shall make that Commission effective. Now, sir, I pretend to say that after we have taken a week, or two weeks and more, making the bare skeleton of a Commission, that the Legislature which is to provide all the details of the work of this Commission, will require a much longer time. We have put into the Constitution a provision that the Legislature may deal with the Stock Boards of San Francisco, and it took us some time to discuss and adopt a proper measure. How long will it take the Legislature to provide the details of that regulation? We have passed an article on city, county, and township organization, by which we have barely sketched a plan for city and county governments. This will be but a trifle as compared with the details of the system. The sections we have adopted in this Constitution are in no sense effective until the Legislature shall have made them so by legislation; and, sir, it is more difficult to work out the details than it is to make the general provision. It will require more time, too. I hope, sir, that gentlemen will be elected to the first Legislature who have been elected to this Constitutional Convention, but we have no certainty that anything of the kind will happen. For my own part, I am satisfied that we make this Constitution in vain, unless we provide a reasonable time for the first session of the Legislature to prepare and make the details by which these various provisions are to be carried out. Take, for instance, the matter of the State Board of Equalization. The Legislature must provide all the details of the manner in which it shall work. What will be the time required to have that bill introduced, examined by a committee, and passed through two houses, with the chances of its being amended and sent back from house to house with amendments to be acted upon? What amount of time will it take to perfect a bill by which this State Board of Equalization is to become effective, as compared with the time it took to provide that there should be a State Board of Equalization, when we acted on the subject of taxation? We have made most radical changes in regard to the matter. We had to provide that the Legislature should make laws to put this system into force, and it will take a good deal of time to do it, if it be done well. Then, sir, the whole machinery of the Courts has to be changed. Instead of District Courts and County Courts, with certain classes of officers, we have provided the Superior Court. The whole system is changed. We have provided that there shall be one Superior Court in every county, but we could not provide the machinery by which these Courts are to work. It would be impossible. The Legislature has got to make the laws which set these Courts in motion. We must be reasonable in these matters. Let us remember, that if we make a mistake in this matter, by which we cripple the whole effect of the changes we have attempted wisely to make, that we will be held responsible for that, too. I do not believe in giving the Legislature any time to waste; but I believe, from what I have seen in this Convention, that one hundred days will not be sufficient to enable the first session of the Legislature to make these provisions which we are adopting effective; therefore, I shall vote in favor of extending the time of the first session to one hundred and twenty days.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I concur entirely in what has been said by the gentleman from Nevada; but I go farther. I do not believe that we ought to limit the time during which the members of the Legislature, at the first session, shall be paid at all. They have a vast amount of work before them; we have provided that the mode of legislation shall be slower than it is at present. We have provided for the reading of each bill in full on three separate days, for one thing. Then we have the vast work of this Railroad Commission. We have an entirely new system of legislation to make in regard to municipal corporations. We have the judicial system to provide for, and the State Board of Equalization, and all of these matters require a great deal of care, a great deal of time, a great deal of thought and preparation. There will be lengthy bills before that Legislature which will have to undergo a great deal of discussion and amendment. Now, it was supposed, when this Convention met, that its whole work would be closed in one hundred days. We are now on the one hundred and twenty-ninth day, and we still have considerable work before us. This body, I think, has worked earnestly, faithfully, and rapidly; but the details of legislation necessarily occupy much more space and time than the formation of an organic law. It will be absolutely necessary, at the first session of the Legislature, to pass laws embodying vast amounts of detail, and for a great variety of purposes. You take this single article on legislation, and you will find that they have a great deal to provide for under it. We have provided that the ayes and noes shall be called on the passage of every bill—a thing that was never known before in this State—and the ayes and noes will be called on a great many different propositions. I submit that we had better not undertake to limit the Legislature at all at its first session. I do not think that we shall find that it will delay its session unnecessarily; that it will occupy more time than will really be required by the business of this State, and in setting into operation a great deal of new machinery which is as yet thoroughly untried, and which will take a great deal of care, a great deal of time, and a great deal of deliberation. I should prefer greatly that no limit should be interposed in regard to the time that it should sit, or the time during which the services of its members should be paid for.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. President: Under section two, as reported by Committee on Legislative Department, the Legislature was allowed eighty days for the first session, and sixty days for each session thereafter. That report was brought in here, and this single section was discussed for several days, there being a doubt in the minds of many members whether eighty days would be sufficient or not, that time was extended to one hundred days, which was conceded to be ample, at that time, for all the purposes of legislation. Now, sir, I have not been able to see any reason or hear any reason adduced why this time should be extended. Under the plan which is adopted in a subsequent section, there will have to be a Legislature called next Winter, and one the following Winter, and if anything is overlooked of importance the following Legislature will have the power and ample opportunity to correct it. Now, sir, if they were absolutely prohibited from sitting longer than one hundred days there would be a serious objection, because there might be legislation absolutely necessary after the expiration of the one hundred days; but, sir, they can extend their session until their legislation is perfected—to one hundred and twenty days if necessary. It is true they are not allowed pay for more than one hundred days. It is said that it would injure legislation very much if their pay was not extended during the whole length of time. I believe that although one hundred days was the limit for which members of this Convention should receive pay, the average attendance since the expiration of the one hundred days has been as good as it was before. I hold that any Legislature that comes here, and a little additional time is required after the time for which they are allowed pay, they will continue their work. They will continue, it is true, no longer than is absolutely necessary to complete the work, and it occurs to me that since all special legislation is cut off that sixty days for a session is ample. It will be remembered that in Pennsylvania, under the old Constitution, that the proceedings of the Legislature in eighteen hundred and seventy-three covered about one thousand two hundred pages. In eighteen hundred and seventy-five, after the adoption of the new Constitution, the Legislature being confined to general laws, their whole work was contained in seventy-five pages. Now, sir, I think that we considered this matter very fully, and it is doubtful expediency to change it.

REMARKS OF MR. JONES.

MR. JONES. Mr. President: Notwithstanding the remarks by the gentleman from Alameda, Mr. Webster, I hope that this Convention will exercise a greater liberality, and a more careful foresight in regard to the interests of the succeeding legislature, than was exercised by the Legislature which authorized the calling of this Convention. It seems to me that we have seen and have felt in an impressive manner, the evils arising from that method of prescribing to another body the length of time in which they shall perform their duties. It is necessarily an approximation to the time justly and properly required. Now, sir, it is proposed that in case the Legislature called to put in operation the machinery of the Constitution proposed by this Convention, should find, that having done their duty to the best of their ability during one hundred days that the work was not two thirds done, that they should do as the members of this Convention have done, and hold on twenty or thirty days longer. It is true they may do it, but is it just to ask them to do it. It is true that this Convention has had quite as full a house since the one hundred days, for which the members were entitled to pay, have expired. But why have they done it? Have they done it because they thought it was just that they should be retained here at their own expense, or have they done it because being here, their personal honor bound them to remain? I insist that it was the latter, and the latter alone; and I have no doubt that if these members, at the time of their election, or at the time their names were offered to the public, had know that the duties devolved upon them would have occupied one hundred and thirty or one hundred and forty days, and that they would have to bear their own expenses while sacrificing their private business, that two thirds of the members of this Convention would have refused to come under such circumstances. I think they would have said, there is no justice in it. It is not right. It is no more right with the members of this Convention, and no less right with members of the Legislature. It is not proposed that the Supreme Court shall receive so much per day for one hundred days, and nothing for a recess, or if they do not perform their duties in that time. I think that the work of the first Legislature after the adoption of this Constitution, will be so great that we should be very careful not to restrict them to an inefficient time, that we had better err a day or two on the wrong side. I therefore ask simply, in behalf of that Legislature, what it would be almost the unanimous voice of this Convention to ask for itself, if it had only foreseen the necessity of the case.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

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AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

LEGISLATIVE SESSIONS.

THE PRESIDENT. The question is upon the amendment to insert "sixty" instead of "eighty."

Lost.

THE PRESIDENT. The question is upon striking out "one hundred days' and inserting "one hundred and twenty."

The ayes and noes were demanded by Messrs. Beerstecher, Heiskell, McComas, Larkin, and White.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Jones,	Soule,
Ayers,	Joyce,	Steele,
Barry,	Lampson,	Stevenson,
Barton,	Lavigne,	Stuart,
Beerstecher,	McCoy,	Sweasey,
Blackmer,	McFarland,	Swenson,
Campbell,	Moffat,	Swing,
Cross,	Morse,	Thompson,
Dowling,	Murphy,	Tinnin,
Dunlap,	Nelson,	Vacquerel,
Garvey,	Neunaber,	Van Voorhies,
Gregg,	O'Sullivan,	Walker, of Tuolumne,
Howard, of Los Angeles,	Reddy,	Wellin,
Howard, of Mariposa,	Reynolds,	Wickes—44.
Huestis,	Smith, of 4th District,	

NOES.

Barbour,	Gorman,	McNutt,
Bell,	Harrison,	Nason,
Biggs,	Heiskell,	Ohleyer,
Boggs,	Hitchcock,	Rhodes,
Boucher,	Holmes,	Schell,
Burt,	Hughey,	Shurtleff,
Casserly,	Hunter,	Smith, of San Francisco,
Charles,	Inman,	Townsend,
Condon,	Johnson,	Turner,
Cowden,	Kenny,	Tuttle,
Crouch,	Keyes,	Waters,
Davis,	Laine,	Webster,
Dean,	Larkin,	Weller,
Evey,	Lewis,	West,
Farrell,	Mansfield,	White,
Filcher,	Martin, of Santa Cruz,	Wilson, of Tehama,
Glascock,	McComas,	Wyatt--51.

MR. LAINE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'during the last ten days of the,' and insert 'after the expiration of ninety days from the commencement of the first session, and of fifty days after the commencement of each succeeding.'"

MR. LAINE. I desire to call attention to the fact that no member of the Legislature could ever tell when the last ten days would be, because there is no limitation to the session.

MR. CAPLES. Mr. President: This is made necessary by the change in the wording of the section, made by the Committee of the Whole.

MR. WEST. Mr. President: There might be a difficulty about this. If the Legislature should see fit to adjourn ten days before the time fixed in the Constitution, then bills might be introduced up to the very last day of the session as they have been.

MR. SWING. I know of no way of judging the future except by the past, and judging in that way we may feel certain that the Legislature will always sit to the end of the time allotted to them, so there is really nothing in this objection.

The amendment was adopted, on a division, by a vote of 57 ayes to 30 noes.

MR. REYNOLDS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out of line three the words 'at twelve o'clock meridian,' and insert the same in line two next after the word 'commence.'"

MR. REYNOLDS. That merely changes the phraseology.

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

Division was called for, the Convention divided, and the vote stood, ayes 40, noes 33—no quorum voting. The question was put again and the amendment adopted by a vote of ayes 44, noes 33.

MR. FILCHER. Mr. President: While the Convention is in a humor to make these little corrections, I move to strike out the word "and," in the seventh line.

Lost.

The section, as amended, was adopted.

MEMBERS—HOW CHOSEN.

THE PRESIDENT. The Secretary will read the amendment to section three.

THE SECRETARY read:

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

The section was adopted.

SENATORS—HOW CHOSEN.

THE PRESIDENT. The Secretary will read the amendment to section four.

THE SECRETARY read:

"SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year next before his election."

Adopted.

APPORTIONMENT.

THE PRESIDENT. The Secretary will read section five as amended.

THE SECRETARY read:

"SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, as hereinafter provided. The seats of the twenty Senators from the odd number districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the second year, so that one half of the Senate, after the first election, shall be chosen every two years."

MR. KELLEY. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add to section five: 'Provided, that no apportionment shall ever be made in this State whereby any one county or city and county shall have more than one third of the members of the Senate and Assembly.'"

MR. KELLEY. That amendment speaks for itself.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: We discussed that matter thoroughly in Committee of the Whole, and at that time the same amendment, or one like it, was voted down. At that time it was demonstrated that San Francisco pays one third of the taxes of this State. We then concluded that representation should be based upon population. Now, whether you base it on population or property values, there ought to be no restrictions on San Francisco or any other municipality. It is unjust, and I protest on behalf of my constituents in San Francisco. It is not right to have one ratio for San Francisco and another ratio for other places.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: This will give San Francisco a larger representation than she has now. Without looking into it, I am informed that she has one fourth now. Now, there may be such a condition of things as would deny to the interior of the State any representation at all. With a State so large as this, and the members of the Assembly so united, you will fix it so that you give to the central portions of the State all the representation, and deny representation to the interior. And that is the condition of things which this amendment seeks to prevent. Even in counties like the one I represent, there will not be one representative to the county. I don't see any objection to this proposition. I should prefer that the Assembly should be increased rather than to pass such an amendment as this. Gentlemen forget that the great territorial extent of this State makes it necessary to increase the members of the Assembly in order to give full representation. The outside portions of the State are not so directly represented, because their population is not so much concentrated. Now, it is much better that you give equal representation to the interior than to San Francisco or Sacramento, for the reason that it is not so easy for the members living in the interior to understand what public opinion is. Six members from San Francisco can represent that city as well as twenty. But take one man from a county like Tulare, and he still might not be able to represent that county. He has got to understand the various interests which he is to represent. I should prefer to see the Assembly increased rather than to pass such an amendment as this. But from the temper of the Convention, it does not seem likely that we will get this increase. Therefore, I am in favor of this amendment.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: It may be, sir, that the rural population may be more reliable than the city. It may be that it would be flattering to the vanity of the country members to have a larger representation. It may be that territory ought to be represented. It may be that wealth ought to be represented. But our whole elective system is based upon a different theory. Do we propose to revolutionize the very principles of republican government by establishing representation upon wealth and territory, or upon considerations of expediency? Certainly this would be a wild innovation to attempt here, however desirable or flattering it may be to the vanity of gentlemen upon this floor who come from the rural districts.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: The amendment offered by the gentleman is of no practical utility. I suppose there is no one here who believes that the City of San Francisco ever will have more than one third of the population of the State. But the principle involved is nonsense. That is all you can say. That amendment simply proposes, in a certain event, to disfranchise certain citizens settled in certain portions of the State. That is about what it amounts to. It absolutely disfranchises them on account of the particular spot in which they happen to reside. It violates the very first principle of representative government, and American citizens ought not to need to be convinced of it.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: The question involved in this amendment is, whether or not we will adopt a representative government. We violate the very first principles by declaring that in case any county shall be entitled, under the rule, to more than one third of the representation of the State, it shall not have it. I certainly do not see

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the force of any argument why we should adopt any such proposition as that. But, on the contrary, there are many reasons why it should not be adopted. We all know what it means. It means the City and County of San Francisco. During the last year the City and County of San Francisco paid one hundred and sixty-four thousand nine hundred and eighty-four dollars towards the support of the common schools of this State in excess of what she drew from the School Fund. We have attempted to adopt a representative government, and yet these gentlemen come here and talk about the immense space over which their counties are spread, and the great scope of country (covered with sage brush, the only inhabitants being horned toads and jack-rabbits,) and gravely propose to have representation in proportion to their territory. If we are going to base representation upon such things, that is all right; but if we are going to base it upon population it is not all right, and we have no use for this amendment.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I am surprised at the position assumed by the gentleman from Yolo. I object to this, because it is in open violation of the principles of representative government. It is not fair. It is not in accordance with the theory upon which this government is founded—not in accordance with the great principles of equality. Why, if we are to be governed by space, some of the poorest counties in the State might have as many representatives upon this floor as San Francisco.

MR. SMITH. Don't you think you could represent the interests of San Francisco, or the interests of Sacramento?

MR. WELLIN. If I could I would be a great deal smarter than I think I am. I think population is the best basis of representation, and not space.

MR. TINNIN. Your party cry is that the "Chinese must go." Now, there are four or five representatives of the Chinese population in San Francisco. What do you propose to do with them?

MR. WELLIN. You count them in the interior, as we do in San Francisco, and it makes no difference in the result. We, to-day, pay nearly half the taxes of this State, and we have nothing like that proportion of representation. We are satisfied. We don't ask anything special, but we do object to such a provision as this. There is already great inequality, and we do not want to make things any more unequal.

REMARKS OF MR. HITCHCOCK.

MR. HITCHCOCK. Mr. President: I think this proposition is right, and ought to be adopted. Even if the City of San Francisco is allowed one third of the representation, we can then barely protect ourselves. I think it is nothing more than right that this amendment should be adopted. It does seem to me that she is claiming here that the people outside of San Francisco don't know the wants of San Francisco. That being the fact, how can San Francisco know the wants of the interior. It is a bad rule that won't work both ways.

REMARKS OF MR. HOWARD.

MR. HOWARD of Los Angeles. Mr. President: I think this amendment is a violation of the principles upon which government rests. It is an invitation to San Francisco not to prosper. You might as well put that city under the kind of government that the Southern States were under not long ago. You go upon the principle, I suppose, that population constitutes the basis of representation—at all events, population or taxation. And taking either theory, or both, this amendment is wrong. It is one that should not be entertained for a moment. It will go very far to put San Francisco out of sight.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: I trust this amendment will be voted down, as remarked by General Howard. It certainly violates all principles of representative government. If San Francisco has the population she ought to be entitled to representation. I should dislike very much to see my own county come under this rule, for I look forward to the day when Milpitas will be a port of entry, and one of the grandest cities in this State. Now, according to these gentlemen, there are only two places in this State, San Francisco and Los Angeles. The San Francisco delegation say that the delegation from that city in the Legislature, were a set of thieves and robbers, stealing the city blind, if it had not been for the interior members. And yet they propose to increase the San Francisco delegation. It is a strange proposition, and I would like to have some gentleman explain it. They throw themselves upon us for protection ——

MR. CAPLES. Which side of this question are you on, anyway? [Laughter.]

MR. TULLY. I am for San Francisco having her representation according to population.

MR. HOWARD, of Los Angeles. How can you have a port of entry at Milpitas without any salt water?

MR. TULLY. We propose to make it. [Laughter.]

MR. BARBOUR. You won't have any trouble about population, if you will just get Lux & Miller to break up their landed estates and give people a chance.

MR. TULLY. The trouble with the gentleman is he has no such clients, and never will have. That class of clients never resort to that class of lawyers. [Laughter.]

MR. BARBOUR. They employ a big firm in the city, and have small country lawyers to do their work in the country. [Laughter.]

MR. TULLY. I hope San Francisco will be allowed her representation notwithstanding what I have said.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I hope the amendment will not be adopted, because it will simply tend to disfigure the Constitution. It will be a violation of principle, without any practical result flowing from that violation. I live in a little city across the Bay, which is increasing faster in population than San Francisco is; she is building more houses in the course of the year than San Francisco. Now, when you take the increase of these neighboring cities, you will find that it is utterly impossible for San Francisco ever to reach the supremacy which they claim here. Look at New York and Brooklyn. When I left the City of Brooklyn it had a population of eighty thousand, and New York had a population of between four hundred thousand and five hundred thousand. To-day, while New York has nine hundred, Brooklyn has six hundred thousand.

MR. TULLY. Permit me. Do you think the increase was on account of your leaving?

MR. CAMPBELL. Not at all, sir. If I had remained the increase might have been a little greater. [Laughter.] The growth of the interior and these small towns and the neighboring cities will always keep pace with San Francisco, and such a provision as this will never be of any use, while it will be a blot on our Constitution.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I shall not detain this Convention long, but it does appear to me, sir, that if we have a right in this Constitution to take away any part of the representation of any part of the country, we have a right to take it all away. It is a violation of the principle. I have been astonished that the matter should be discussed as much as it has. Population should form the basis of representation. If they are deprived of that, they are deprived of representation. I am in hopes the amendment will be voted down.

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

Lost.

MR. MCFARLAND. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'provided,' in line two, and insert as follows: 'Except that the persons who were elected to the office of State Senator at the general election in the year A. D. eighteen hundred and seventy-seven, shall hold said office until the expiration of the term for which they were elected.'"

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: Legislating men out of office without any cause, who have been elected by the people, is wrong in principle. It ought not to be done except in a case of necessity. It has been done heretofore by the Legislature of this State, and it has been looked upon by all parties as wrong. Now there is no necessity for legislating twenty Senators out of office, elected by the people a year ago. By adopting the amendment which I have sent up no further amendment will be necessary, because this provides that the present apportionment shall stand till the Legislature changes it. There is no reason, no excuse whatever why these Senators who have been elected by the people should be legislated out of office. It is wrong in principle, and the only benefit is to create a few more offices to be filled at the next election.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: If the Convention starts in on this plan we will be detained weeks, and perhaps months, legislating gentlemen into office. Now, if this Constitution is adopted, it is the evident intention of this body that there shall be an entire new deal—that there shall be a general election. If we start in on the proposition to legislate a few men into office, we will never get away.

MR. ANDREWS. I think I see a difficulty here in this thing. There are now but twenty-eight Senatorial districts in the State; consequently section five would have to be adjusted to reconcile it with the condition of Senatorial districts now existing. I will ask the gentleman whether his amendment will cover that point?

MR. MCFARLAND. I think it will, because section six provides that the apportionment shall remain as it now stands. The only thing to be done would be next Fall to elect twenty Senators under the present apportionment, and allow the twenty to remain in office till their term expires.

MR. ANDREWS. I think your amendment will obviate the difficulty. If we do not adopt that I would like for some gentleman to suggest something to do it.

MR. WHITE. Mr. President: I hope this amendment will not be adopted. If there is any one thing this Convention is expected to do more than another, it is to turn out all these officers now in place. The last Legislature was the most unpopular body that ever assembled.

MR. HILBORN. Except this Convention.

MR. WHITE. No, sir. I hope this tinkering work will be given up; that we will let the people elect such a Senate as they want.

THE PRESIDENT. The question is upon the adoption of the amendment.

Lost.

MR. SMITH, of Fourth District. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out, in line two, the word 'eighty,' and insert in the same place the word 'ninety.'"

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: I do not think this matter is fully comprehended, from the fact that we have had heretofore eighty members of the Assembly. These eighty members were considered necessary at that time to the wants of the State. Previous to that the counties were thinly populated; now they are being thickly settled, and their interests are growing larger and more diversified. Take the

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two Counties of Tulare and Kern. It is three hundred miles across them. We have in the County of Kern large mining interests in one part of the county, and in another part large farming interests. In one portion of the county the farming interest is entirely dependent upon irrigation; in another portion it depends upon rain, and as it is now, there is but one representative for the Counties of Tulare and Kern. I say that one representative cannot fairly represent the interests of those two counties. It seems to me absolutely necessary.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: The gentleman from Kern seems still to be afflicted with the idea that miles and territory should form the basis of representation. Now, if my memory serves me right, this Convention negatived a proposition of that kind. Yet he appears to be filled with the idea that miles and territory should form the basis of representation. This whole subject had a thorough discussion in the Committee of the Whole, and had a large share of discussion in the Legislative Committee. The sentiment of that committee, as well as of this Convention was in favor of curtailing rather than increasing the representation. It may be desirable for the gentleman from Kern, and other gentlemen, to make places for themselves or somebody else, but the taxpayers of this State have some right. This attempt to increase the representation after the Committee of the Whole have decided upon it, is certainly in bad taste. I have no doubt the sentiment of this Convention is in favor of standing by the conclusion arrived at by the Committee of the Whole. As to the amendment of the gentleman from Kern, I submit that it is not worth a second thought.

THE PRESIDENT. The question is upon the adoption of the amendment.

Lost.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Carried.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section six.

THE SECRETARY read:

"SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Legislative districts. Each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to forty, inclusive, in numerical order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of said districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the Legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district. Until such adjustment shall be made, the apportionment now provided by law shall continue in force."

MR. MANSFIELD. Mr. President: I offer the following amendment:

THE SECRETARY read:

"Add to section six—insert after the word 'force,' in line twenty, 'excepting that, in the meantime, Los Angeles County shall be entitled to two Senators instead of one, and three Assemblymen instead of two.'"

SPEECH OF MR. AYERS.

MR. AYERS. Mr. President: I wish to say that under the present apportionment of this State there is an act of the greatest injustice being done to Los Angeles County; that her representation is inadequate, and does not compare with that of any other county in the State. In order to show how unjustly our county is treated in this matter, I will say that Los Angeles, according to the Presidential vote of eighteen hundred and seventy-six, has one representative to every two thousand two hundred and nineteen votes; San Francisco, one for every one thousand three hundred and sixty-six votes; Santa Clara, one for every one thousand two hundred and eighty votes; Nevada and Sierra, one for every one thousand and fifty-one votes; Amador, one for every eight hundred and twenty-nine votes. Now, sir, I sought in the Committee of the Whole to have this entire apportionment revised. I spent a good deal of time in trying to adjust it fairly as between all the counties, and I presented an amendment here which was referred to the Legislative Committee. What has become of that amendment I do not know. It has not been reported back to this Convention, nor do I know where it is now.

MR. CAMPBELL. Alameda County had nearly nine thousand votes.

MR. AYERS. Yes; that is one of the counties which is treated unjustly. She has eight thousand two hundred and eighty-nine votes, and only two Senators and three Representatives; while Humboldt, with two thousand four hundred and eighty-seven votes, has one Senator, and two Representatives, or as much representation as the County of Los Angeles, with her six thousand votes. Tulare has three thousand six hundred and forty-seven votes, and she has as much representation as Los Angeles. Nevada and Sierra, five thousand six hundred and thirty-one votes—one less than the County of Los Angeles—has two Senators and four Assemblymen. Santa Clara with a less vote than we have, has two Senators and three Assemblymen.

MR. TULLY. We are a better people.

MR. HOWARD, of Los Angeles. They don't show it by their delegation. [Laughter.]

MR. WEST. Mr. President: This is a very serious matter. Under the section adopted by the Committee of the Whole we shall have to remain with this inadequate representation until about the year eighteen hundred and eighty-four. It cannot be rectified before that time.

MR. LARKIN. Eighteen hundred and eighty-one.

MR. WEST. The census will be taken in eighteen hundred and eighty-one, and then the Legislature, which meets in eighteen hundred and eighty-two, will apportion the State, and the Legislature elected in eighteen hundred and eighty-four will be elected under the new apportionment. Now, sir, it is not right for this Convention to leave us with this inadequate representation for that length of time, when we have a chance to correct it now.

MR. HOWARD, of Los Angeles. Mr. President: I believe it will be in order to recommit this section. It will all need revision. It is very unjust, and I move to refer it to the Committee on Legislative Department.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I am surprised that the gentleman should propose such a remedy for this evil, which is admitted to be an evil. We admit the proposition, but it must be apparent to gentlemen that to open the question of apportionment at this time is to create confusion worse confounded. How long will it be before other gentlemen will come forward and say: "my county is not represented?" And they will be telling the truth, because the present apportionment is based upon the census taken nine years ago. Within that nine years many changes have occurred in population. Hence the inequalities of which gentlemen complain. In one year more we will have another census, and then an apportionment will be made in a short time afterwards. If we attempt to correct one of these inequalities, the result will be that we will have to reapportion the State here and now. That is the only remedy. I do not propose to apply a special remedy to one county and leave all the others out. If the gentlemen of the Convention propose to remedy this evil now, there is but one way to do it, and that is to refer the whole matter back to the committee, with instructions to reapportion the State.

MR. AYERS. I am perfectly willing to do that.

MR. LARKIN. Mr. President: This matter cannot be corrected at this time. It is too late to pursue this matter. There are, no doubt, many inequalities, but they are not the result of any action here; they are the result of natural events. Changes in population make inequalities. We had better allow the matter to remain as it is.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: There are many reasons why this matter should be carefully considered and examined on this occasion. We will be deprived of our just apportionment for two sessions of the Legislature before this matter can be regulated. Now it will be understood by the members of this Convention that the next two sessions of the Legislature will be very important ones, in which the policy and laws of the State are to be changed. If the Constitution is not adopted this matter will be of no importance. But I believe the Constitution will be adopted, and the entire policy of the State changed. And each county in the State ought to be properly, and justly, and honestly represented. It is a matter of the greatest importance to the people of this State, and especially to the southern portion of the State. I hope the Convention will give it proper consideration.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: There are some remarkable incongruities in the section as it now stands. The report of the Committee on Legislative Department provided for thirty Senatorial districts. We changed the number of districts to forty, and were compelled to throw out the division of the State which they had made. Section five provides as follows:

"SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, as hereinafter provided. The seats of the twenty Senators from the odd number districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the second year, so that one half of the Senate, after the first election, shall be chosen every two years."

Now the present number of districts is twenty-eight. The half of twenty-eight is fourteen. Then only fourteen Senators from the odd numbered districts will go out of office at the end of two years, and by that means we will have some Senators holding for six years. There is a marked inconsistency in the two sections. Now, there has been a great change in the status of population in this State. Some places have increased while others have decreased. Now, sir, to harmonize these difficulties in Convention would be an utter impossibility. We might as well try to district the State in Convention as to say that Los Angeles shall have one more, or Monterey, or some other county one more. Now, sir, I understand that a motion to commit to a committee is always in order and takes precedence to the motion now before the house. I therefore move that section six be recommitted to the Committee on Legislative Department, with instructions to report a division of the State with forty Legislative districts, to be divided as nearly according to population as possible.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. President: I think the gentleman from Nevada is entirely mistaken in his reading of the section. It provides that they shall be elected as now provided by law. There is no difficulty about it. The gentleman is mistaken. I hope there will be no attempt made to redistrict the State by this Convention. If we do it will take three or four weeks. The Legislature can redistrict the State more correctly

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when they have before them the new census. We have nothing to go upon except the votes cast at the last Presidential election. If we undertake it we will get into a war that will last for weeks.

MR. HOWARD. I call for my motion.

THE PRESIDENT. The question is on the motion of the gentleman from Los Angeles, Mr. Howard, to recommit sections five and six to the Committee on Legislative Department to reapportion the State into forty Senatorial districts.

The ayes and noes were demanded by Messrs. Howard, of Los Angeles, Ayers, West, Huestis, and Blackmer.

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

AYES.

Andrews,	Heiskell,	Rhodes,
Ayers,	Howard, of Los Angeles,	Schell,
Blackmer,	Howard, of Mariposa,	Smith, of 4th District,
Boggs,	Huestis,	Stevenson,
Brown,	Inman,	Stuart,
Campbell,	Jones,	Tully,
Charles,	Kelley,	Turner,
Cross,	Mansfield,	Van Voorhies,
Dowling,	McCoy,	Webster,
Evey,	Nelson,	West,
Filcher,	O'Sullivan,	Wickes,
Glascock,	Reynolds,	Wilson, of Tehama—36.

NOES.

Barry,	Holmes,	Nason,
Beerstecher,	Hughey,	Neunaber,
Bell,	Hunter,	Ohleyer,
Biggs,	Johnson,	Reddy,
Boucher,	Joyce,	Schomp,
Burt,	Kenny,	Shurtleff,
Caples,	Keyes,	Smith, of San Francisco,
Condon,	Laine,	Soule,
Cowden,	Lampson,	Steele,
Crouch,	Larkin,	Sweasey,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Thompson,
Dudley, of Solano,	Lewis,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Townsend,
Estee,	McComas,	Tuttle,
Farrell,	McConnell,	Vacquerel,
Garvey,	McFarland,	Walker, of Tuolumne,
Gorman,	McNutt,	Waters,
Gregg,	Moffat,	Weller,
Harrison,	Morse,	White,
Hilborn,	Murphy,	Wyatt—64.
Hitchcock,		

THE PRESIDENT. The question is on the amendment of the gentleman from Los Angeles, Mr. Mansfield.

Lost.

THE PRESIDENT. The question is upon the adoption of section six.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I am opposed to these amendments to recommit. Our present Constitution provides that the State census shall be the basis of apportionment. The Legislature has violated that provision by failing to provide an enumeration, but there is no reason why the State should continue to violate the Constitution of the State. It is unjust to base the apportionment upon the Federal census, because that census is conducted in such a manner as to be practically no census at all in the thinly settled portions of the State. In the sparsely settled portions of the State it never can be full and complete. That portion of the State where I live has always been treated unjustly in the matter of representation, and I hope these abuses will not be allowed to continue.

MR. MCFARLAND. If you don't like the country districts you can go to San Francisco.

MR. ANDREWS. I do like the country districts, and there is no good reason why they should be treated unjustly.

MR. CAPLES. Are you in favor of providing for a State census?

MR. ANDREWS. Yes, sir.

MR. LAINE. Mr. President: I think the gentleman is mistaken about the effect of this. It does not require that the apportionment shall be absolutely upon the Federal census, it simply requires it to be based on the enumeration; but it does require it to be as nearly equal in population as possible. But the Legislature is not bound by the Federal census, it simply takes it as an estimate; so it did before. The requirement here is, that the Legislature shall do it as nearly according to population as possible. I do not think there is any objection to that. You may resort to the vote if you choose.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I am opposed to this section as it now stands. It provides for dividing the State into forty Senatorial districts, from which there shall be elected one Senator and two Assemblymen each, consequently the entire Senatorial district must elect two Assemblymen, and whatever territory the district may be composed of, the full territory must vote for the Assemblymen. Now, sir, I do not think that is a proper representation of the people in the Legislature; I think counties that are, by population, entitled to one Assemblyman, should be entitled to elect that Assemblyman from their own limits and by their own votes. Take the fifth Senatorial district, which is composed of the Counties of Merced, Mariposa, and Stanislaus; at the present time, these three counties are divided into two Assembly districts, composed in this way: Mariposa and Merced form one Assembly district, and Stanislaus one district. I know the people of my county do not desire to elect an Assemblyman in connection with another county; I presume that other counties are in the same fix. I think the State should be divided into Assembly districts the same as heretofore. I propose to offer an amendment to that effect.

"Insert, after the word 'forty,' in line two, the words 'Senatorial and eighty Assembly.' Also strike out the word 'legislative,' and insert 'Senatorial and Assembly.' Insert after the word 'each,' in line four, the word 'Senatorial,' and strike out from same line the words 'two members of the Assembly,' and insert 'each Assembly district shall choose one member of Assembly.' Also insert after the word 'the,' in line five, the word 'Senatorial,' and after the word 'order,' in line six, insert the words 'and the Assembly districts shall be numbered from one to eighty, in the same order.'"

I am sorry the Convention did not see fit to recommit this matter to the committee. I do not know that the amendment which I have offered will fully express my idea. I have offered it as being the best I was able to prepare. If it is adopted it will read in this way:

"SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty Senatorial and eighty Assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Senatorial and Assembly districts. Each Senatorial district shall choose one Senator, and each Assembly district shall choose one member of the Assembly. The Senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the Assembly district shall be numbered from one to eighty in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of said districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the Legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district. Until such adjustment shall be made, the apportionment now provided by law shall continue in force."

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: The gentlemen seem to be proceeding upon the hypothesis that exact and methodical justice can be done to everybody and every section. Now, I ask the gentlemen to stop and reflect a moment. Is it possible to arrive at an apportionment that will deal out methodical justice to everybody and every section. It becomes absolutely necessary to put two counties together, unless we increase the Assembly to one hundred members. It is out of the question. There are evils connected with this matter, but it is an utter impossibility to remedy all of them here. The question is here, shall we go into another apportionment? Now, I see no possible means of making an apportionment that will be satisfactory to all.

MR. TINNIN. I am satisfied that this section is imperfect, and will create a great deal of confusion. I move that it be temporarily passed.

MR. LAINE. Mr. President: I have observed these inconsistencies between the two sections for some time, and it is impossible for us to rectify the matter here in the confusion of this body. The trouble has already been pointed out. The idea of the Committee of the Whole was this: that the State should be divided into forty districts. But they also provided that the present apportionment should last till that was done. As we have got into this confusion about it, I hope the motion last made will prevail.

MR. SMITH, of Fourth District. I ask the gentleman, under the present apportionment, are there not forty-two Senators and eighty-one Representatives?

MR. LAINE. No, sir; forty Senators and eighty Assemblymen.

MR. SHURTLEFF. Mr. President: I hope the motion to pass the section will prevail. The more it is examined into the worse it appears. It is an outrage to compel two counties to join in electing two Assemblymen, instead of allowing each county to choose its own.

THE PRESIDENT. The question is on temporarily passing section six.

Carried, and the section temporarily passed.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twelve.

THE SECRETARY read:

"SEC. 12. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Carried.

NOTICE.

MR. TINNIN. Mr. President: I wish to send up a notice.

THE SECRETARY read:

"I hereby give notice that I will, on to-morrow, February fourth, eighteen hundred and seventy-nine, move to reconsider the vote by which section five was adopted."

ADJOURNMENTS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section fourteen.

THE SECRETARY read:

"SEC. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in

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which they may be sitting. Nor shall the members of either House draw pay for any recess or adjournment for a longer time than three days."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Carried.

READING AND PASSAGE OF BILLS.

THE PRESIDENT. The Secretary will read the amendment of Committee of the Whole to section fifteen.

THE SECRETARY read:

"SEC. 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House, unless, in case of urgency, two thirds of the House where such bill may be depending shall, by a vote of yeas and nays, deem it expedient to dispense with this rule. Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House."

MR. FILCHER. I move to amend line six, by striking out the word "rule," and inserting the word "provision."

Adopted.

MR. DUDLEY, of Solano. I suggest the word "pending," in line five, instead of "depending."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Carried.

BILLS—HOW APPROVED OR VETOED.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section sixteen.

THE SECRETARY read:

"SEC. 16. Every bill which may have passed the Legislature, shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter the same upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, two thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor."

MR. SCHELL. Mr. President: I move to amend by striking out, in the sixteenth line, the words, "the same," and inserting "such objections."

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Concurred in.

WHO ARE ELIGIBLE TO OFFICE.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-one.

THE SECRETARY read:

"SEC. 21. No person who shall be convicted of the embezzlement or defalcation of the public funds of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide by law for the punishment of such embezzlement or defalcation as a felony."

MR. HITCHCOCK. Mr. President: I move to amend.

THE SECRETARY read:

"Strike out, in line one, the words 'who shall be.'"

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

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Concurred in.

ELEEMOSYNARY INSTITUTIONS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-two.

THE SECRETARY read:

"SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances; such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institutions. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

MR. REYNOLDS. Mr. President: I move to strike out all after the word "State," in line seven.

MR. AYERS. I hope the amendment will not prevail. There was a prolonged struggle over this matter in the Committee of the Whole, and I do not believe the Convention is ready to go back on its action on that occasion.

The ayes and noes were demanded by Messrs. Reynolds, Reddy, Gorman, Condon, and Smith, of San Francisco.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Holmes,	Schomp,
Blackmer,	Kelley,	Steele,
Burt,	Laine,	Stevenson,
Charles,	Lewis,	Tuttle,
Crouch,	Mansfield,	Vacquerel,
Evey,	Martin, of Santa Cruz,	Weller,
Filcher,	McComas,	West—23.
Hitchcock,	Reynolds,	

NOES.

Ayers,	Heiskell,	O'Sullivan,
Barbour,	Hilborn,	Reddy,
Barry,	Howard, of Los Angeles,	Rhodes,
Beerstecher,	Huestis,	Ringgold,
Bell,	Hughey,	Schell,
Biggs,	Hunter,	Shurtleff,
Boggs,	Inman,	Smith, of 4th District,
Boucher,	Johnson,	Smith, of San Francisco,
Brown,	Jones,	Soule,
Campbell,	Joyce,	Stuart,
Caples,	Kenny,	Sweasey,
Condon,	Keyes,	Swenson,
Cowden,	Kleine,	Thompson,
Cross,	Lampson,	Townsend,
Davis,	Larkin,	Tully,
Dean,	Larue,	Turner,
Dowling,	Lavigne,	Van Voorhies,
Dudley, of Solano,	McConnell,	Walker, of Tuolumne,
Dunlap,	McCoy,	Waters,
Estey,	McNutt,	Webster,
Farrell,	Moffatt,	Wellin,
Garvey,	Morse,	Wickes,
Glascock,	Murphy,	White,
Gorman,	Nason,	Wilson, of Tehama,
Gregg,	Neunaber,	Wyatt—77.
Harrison,	Ohleyer,	

PAIRED—Mr. Tinnin, aye, with Mr. Casserly, no.

MR. HILBORN. Mr. President: I move to strike out all after the word "Controller," to and including the word "State," in line seven, so as to read:

"SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; *provided*, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances; such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; *provided further*, that the State shall have, at any time, the right to inquire into the management of such institutions. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature."

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: This amendment of mine strikes out that provision prohibiting the appropriation of money for the support of these various charitable institutions. We have two classes of charitable institutions in this State which have heretofore received State aid. First, are the asylums proper, for orphans, and those other institutions which receive afflicted people of all kinds besides orphans. There is a large class of very deserving institutions in this State, which are taking care of the afflicted, who would otherwise have to be supported entirely by the State. Take, for instance, the Howard Benevolent Society of this city. It is more than a local institution, it is more than a State institution, it is a national institution. I remember here last Winter there was a flood, and people were driven from their homes; they came into this city, glad to escape with their lives. Men, women, and children were calling for help. The Howard Society supported them for weeks and months; they did all they could, but finally there came a time when private benevolence was unable to support them. They came to the Legislature

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and said: "We are able to take care of the poor of Sacramento, but these are not our poor; they are people from Yolo, and Colusa, and adjoining counties, and it is not right that the whole burden of their support should fall upon us. We come here to ask the Legislature to make an appropriation for the support of these people." And we gave them five thousand dollars. Is there a person of sound mind anywhere, who would not have voted for it? I believe that it is unwise to place a restriction in this Constitution that will prevent the Legislature doing that sort of thing. Now, we never have had epidemics, but suppose next year a thing should occur in this State which has occurred in the cities of the South, what condition would we be in? Now, I have before me the report of the Committee on State Hospitals, of the last Legislature. In giving an account of the Howard Benevolent Society, they show that private benevolence gave five times as much as the Legislature to the support of this institution, and there are many other institutions in this State of a similar character. I will inform the farmers of this body that this will shut off all such thing as State appropriations to their District Agricultural Societies. I don't believe that is wise. I hope, for these reasons, that the motion will prevail.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: If it were not unparliamentary, I would denominate this as a scheme to lay open the treasury of this State. Now, sir, I desire to call the attention of this body to the fact that the passage of this amendment will open the door of the State treasury to everything to step in and help themselves. It will open the doors to every corporation in this State, to railroads, to wagon roads, in fact to every scheme that can be hatched and brought forward to rob the treasury and the people. If this body desires to prevent that sort of thing, then by all means vote down this amendment.

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I agree fully with the gentleman from Trinity. I think it would be opening the doors of the State treasury to all sorts of schemes. Gentlemen speak of the plague-stricken cities of the South. There is less danger from plagues than there is from having our State treasury bankrupt, and the funds abstracted and given away to private institutions. I hope this provision will be allowed to remain. It is the only guard there is to the State treasury.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: While not agreeing with Mr. Stuart on the Chinese question, I do agree with him in this matter. It is to-day, by reason of having no provision of this kind in the Constitution, that the State is paying out one hundred and fifty thousand dollars a year interest upon the bonds of the Central Pacific Railroad Company. And where is the benefit? Where is the benefit, I ask of gentlemen? We have been fighting this matter here for almost six weeks, in order to reduce the railroad corporations to the control of the State.

MR. HILBORN. I will accept any amendment that will include only charitable institutions.

MR. BEERSTECHER. That is too thin. We have given the Legislature full power to make donations to charitable institutions, and I think it is time to stop. I am astonished at the argument made in regard to the flood. People, when they are driven out by flood, generally go where it is higher, and not where they expect to be driven out again. I think it is about time to stop. I hope the amendment will be voted down.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope the amendment will not prevail. It is merely taking out of this report, as it comes from the Committee of the Whole, one of the best sections in it in the direction of retrenchment. Now, we all know, who are familiar with the doings of the Legislature in regard to appropriations, that many of these donations are crowded in by those who have means.

MR. HILBORN. Is it not a fact that we have a provision allowing the Governor to veto single items in the appropriation bills.

MR. BLACKMER. The difficulty may disappear to some extent. Let us look for a moment and see what the gentleman proposes to strike out:

"And no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State."

Now, if that provision is allowed to remain you will find that it will stop some of the leaks that have been complained of. Leave it out and it will open the door to all the leeching which we have tried to stop. We do not need to have half an eye to understand what all this means; what the under current of all this is. Now, at the last session of the Legislature, they appropriated money for all the asylums not included in this prohibition, at the rate of one hundred dollars each per annum for whole orphans, and seventy-five dollars each per annum for half orphans and abandoned children. Then they went beyond that and appropiated money to the San Francisco Magdelen Asylum; Old Woman's Home, on Rincon Hill; Little Sisters' Infant Shelter; Sisters of Mercy Hospital, Los Angeles; the Howard Benevolent Association, Sacramento; San José Ladies Benevolent Association; the Ladies' Benevolent Association at Placerville; Protestant Episcopal Church Home; St. Luke's Hospital; Scandinavian Ladies' Home; Ladies' Relief Association, Sacramento; Vallejo Benevolent Society; San Diego Benevolent Society; Pacific Dispensary, for women and children, San Francisco; Grass Valley Ladies' Relief Society; Napa Benevolent Society; Youths' Directory, San Francisco, and a number of others. Now, sir, it is time some of these were cut off, and I sincerely hope the amendment may not prevail.

MR. BARBOUR. Mr. President: I do not propose to argue this question, but simply to say, that I hope the amendment will be voted down.

MR. LARUE. Mr. President: I hope the motion to strike out will prevail. I wish to inform the gentleman from San Francisco that for a distance of over one hundred and fifty miles this was the only spot that was dry, and the people from the surrounding counties were brought here for assistance. I am in favor of assisting in cases of that kind. I wish to leave the Legislature with discretion to make appropriations in cases of that kind.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I hope the motion will prevail. We can never tell how soon our State may be afflicted with epidemics. It may be that in less than a year we shall be afflicted with the plague. It would not surprise me at all. We cannot tell when contingencies may arise that will require legislative aid, and I am opposed to a provision in the Constitution which will prevent the Legislature from exercising a wise discretion in these matters.

MR. CAPLES. Was it legislative aid that provided for the wants of the cities of the South when they were stricken with pestilence?

MR. HOWARD. There was no Legislature in session, else there would have been legislative aid, because the whole country was willing to protect them, and did. Now, I have been reading all the reports that I can find upon this subject—English and American—and they all come to this conclusion, that in the matter of the support of the poor, the indigent, the sick and afflicted, there are two modes of relief. One is the poor-rate, by which the sufferers are supported at a public institution called a poorhouse. The other is what is termed outdoor relief, in which, by the aid of certain societies, small sums are distributed from time to time. In the winter time they are aided to the extent of supplying their personal wants. Now, sir, my opinion is that these societies are most efficient in giving aid. They can ascertain, better than the public authorities can, what parties are entitled to aid, and to what amount. They inquire with greater intelligence, and they know with more accuracy. We have a relief society in Los Angeles, and I believe that the funds are always wisely used. I believe the funds will be applied more discreetly than they would if you have a public poorhouse and county hospitals. Besides, why should we take this power from the Legislature? Why cut off all power of relief, where relief may be absolutely necessary? I think we can leave this matter to the Legislature with perfect safety.

MR. TULLY. Mr. President: I shall have to put myself upon the *re*-cord in this matter. [Laughter.] I hope the motion to strike out will prevail. It is a very strange proposition that gentlemen should be willing to say that the Legislature of this State shall not, under any circumstances, be allowed to appropriate money to the poor and suffering people who may be in need of aid. It is a strange proposition to me. I am willing to trust the Legislature to that extent. I hope that it will never be said of the State of California, that any charitable institution ever applied to the Legislature for relief in vain.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: This is an attempt to strike out of this section the only really beneficial feature there is in it. Now, sir, strike that out, and you transform the State treasury into a sort of political grab-bag. That is what it has been. I ask you, can the Legislature intelligently appropriate money for these local institutions, which ought to be under the control of the counties, and under the immediate direction of the local authorities? No, we should not appropriate money except where the men who pay the money can see what it is appropriated for. Now, I claim that all these institutions for the poor should be supported by the counties, where they are under the immediate supervision and inspection of the people who contribute to them. We are not opposed to public funds being contributed for charitable purposes, but we claim that the distribution of the funds should be made by those who are competent to do it. We are opposed to making the State treasury common plunder.

MR. HILBORN. Can you point me to a single instance where money appropriated for these purposes has been misapplied.

MR. WEST. I can answer the gentleman by defying him to show that the moneys have not been. I do assert that the money has been appropriated to objects entirely out of the jurisdiction of the State, and not under its control. I might include every one of these appropriations. I hope this Convention will vote down the motion.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: In the Committee on Legislative Department they labored with great pains to erect around the State treasury secure fortifications. Perhaps it is defective. Perhaps they did a foolish thing. At all events, one wing of our works has given way. The poor orphan was made the weapon with which to batter down the wall. We surrendered and voted with the poor orphan this time, because we saw that resistance was useless. Great is Humbug, and the orphan is his prophet. The artillery was very heavy, and we are subjugated. Now, the gentleman from Solano assails us on the other side with ladies' benevolent societies, and I desire to say to him that the artillery is not so heavy as the poor orphan. It is too light; it won't win. We propose to defend our works from that side, and the artillery is too light to make a breach. We warn them that pop-guns will have no effect. The question here is whether the doors of the State treasury are to be thrown wide open as they have been in the past. If they open to the poor orphan, I am satisfied, as far as I am concerned. I have surrendered. But I do not propose to surrender to these corporations and societies. Not much. I propose to defend the works. Charity covers a multitude of sins, no doubt, and I desire to say in this connection that charity begins at home, and if there is any class of

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people in the State of California who are really objects of charity, they are the taxpayers.

MR. WATERS. I move the Convention do now adjourn.

Lost.

MR. HARRISON. I don't desire to make any argument upon this thing. I wish to protect the treasury of the State which the committee has attempted. I don't wish to make any war; but, sir, an attempt has been made to strike away from here one of the most deserving charities. I wish to say in regard to the orphans ——

MR. OHLEYER. I rise to a point of order. The gentleman is arguing in regard to the orphans.

THE PRESIDENT. The gentleman will confine himself to the question.

MR. FILCHER. How can he confine himself to the question when his speech was written last night, before he knew what question was coming up?

MR. HARRISON. Mr. President:—[Stamping, applause, and cries of "question," "question," and great confusion.]

ADJOURNMENT.

MR. REDDY. Mr. President: I move we do now adjourn.

Carried, and at five o'clock the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND THIRTIETH DAY.

SACRAMENTO, Tuesday, February 4th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hitchcock,	Reddy,
Ayers,	Holmes,	Reed,
Barbour,	Howard, of Los Angeles,	Reynolds,
Barry,	Howard, of Mariposa,	Rhodes,
Beerstecher,	Huestis,	Ringgold,
Belcher,	Hughey,	Schell,
Bell,	Hunter,	Schomp,
Biggs,	Inman,	Shafter,
Blackmer,	Johnson,	Shurtleff,
Boggs,	Jones,	Smith, of Santa Clara,
Boucher,	Joyce,	Smith, of 4th District,
Brown,	Kelley,	Smith, of San Francisco,
Burt,	Kenny,	Soule,
Campbell,	Keyes,	Stedman,
Caples,	Kleine,	Steele,
Chapman,	Laine,	Stevenson,
Charles,	Lampson,	Stuart,
Condon,	Larkin,	Sweasey,
Cowden,	Larue,	Swenson,
Cross,	Lavigne,	Swing,
Crouch,	Lewis,	Thompson,
Davis,	Lindow,	Tinnin,
Dean,	Mansfield,	Townsend,
Dowling,	Martin, of Alameda,	Tully,
Dudley, of Solano,	Martin, of Santa Cruz,	Turner,
Dunlap,	McCallum,	Tuttle,
Estee,	McComas,	Vacquerel,
Estey,	McConnell,	Van Dyke,
Evey,	McCoy,	Van Voorhies,
Farrell,	McFarland,	Walker, of Tuolumne,
Filcher,	McNutt,	Waters,
Freud,	Moffat,	Webster,
Garvey,	Morse,	Weller,
Glascock,	Murphy,	Wellin,
Gorman,	Nason,	West,
Grace,	Nelson,	Wickes,
Gregg,	Neunaber,	White,
Harrison,	Ohleyer,	Wilson, of Tehama,
Heiskell,	O'Sullivan,	Wyatt,
Herold,	Pulliam,	Mr. President.
Hilborn,		

ABSENT.

Barnes,	Graves,	O'Donnell,
Barton,	Hager,	Overton,
Berry,	Hale,	Porter,
Casserly,	Hall,	Prouty,
Doyle,	Harvey,	Rolfe,
Dudley, of San Joaquin,	Herrington,	Shoemaker,
Eagon,	Miller,	Terry,
Edgerton,	Mills,	Walker, of Marin,
Fawcett,	Moreland,	Wilson, of 1st District,
Finney,	Noel,	Winans,
Freeman,		

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Hale.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITIONS.

Messrs. Beerstecher, Tully, McCoy, Barbour, Wellin, and Harrison presented petitions requesting the exemption of certain property used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

LEGISLATIVE DEPARTMENT.

THE PRESIDENT. The Convention will resume consideration of the article on Legislative Department.

MR. TINNIN. I gave notice of a motion to reconsider the vote by which section five was adopted. I desire to call up that motion now. Section five was evidently adopted by this body under a misapprehension. There are difficulties to overcome which the old section will not cover, and last night I drew up the following substitute which I desire to offer for section five if this motion to reconsider prevails:

"The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two, from the odd numbered districts, shall be vacated at the expiration of the second year, so that one half of the Senators shall be elected every two years; provided, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years."

Now, Mr. President, it is evidently the intention of this body to change the time of elections so that they will come regularly with the congressional and Presidential elections. We find it necessary to make the first Senators elected hold office for the term of three years, which will bring the time up to eighteen hundred and eighty-two, by which time there will have been an apportionment made, and the terms of the elections will, after that time, become regular. Then the Senators can be divided so that one half will go out every two years. We find that this is the only manner in which we can relieve ourselves of this difficulty. I move now to reconsider the vote by which section five was adopted.

MR. BLACKMER. Mr. President: I hope this motion to reconsider will prevail, because it is the only way, in my judgment, out of the difficulty. It is suggested by some that it would be better to have the Senators divide themselves, and go out of office, one half at the end of one year and the others at the end of three years; but it does not reach the trouble, because, by the reapportionment under the new census the districts, as they now exist, will be entirely blotted out, and new districts will be formed, and the Senators elected will not be from the districts as they will stand after the apportionment. So that it seems that the only way to cover this difficulty is to elect the Senators for a term of three years. Before their term will have expired the new apportionment will be made according to the new census and new districts formed, and then it will be a very easy matter to determine that those from the odd numbered districts will go out at the end of two years and the rest at the end of four years.

THE PRESIDENT. The question is on the motion to reconsider.

The motion prevailed.

MR. TINNIN. I now offer this substitute.

APPORTIONMENT.

THE SECRETARY read:

"SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two, from the odd numbered districts, shall be vacated at the expiration of the second year, so that one half of the Senators shall be elected every two years; provided, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years."

MR. GREGG. Mr. President: I think that prohibits the Legislature of this State making an apportionment of this State until eighteen hundred and eighty-two. I do not think it is right. If the apportionment is unequal and unjust now, it should not be left so until eighteen hundred and eighty-two.

MR. TINNIN. Mr. President: It is utterly impossible for an apportionment to be made before that time. The United States census will be taken in eighteen hundred and eighty.

MR. GREGG. I think they can make a better apportionment than we have, at the next session of the Legislature—a very much better one than we have now. You can base it upon fair estimates made. It is well known to members in this body that in many localities there are two Senators and four Assemblymen to four thousand or six thousand votes, while in others of eight thousand or ten thousand there is only one Senator and two Assemblymen.

MR. TINNIN. The apportionment is required to be made upon the United States census.

MR. GREGG. It is only directory and not mandatory.

MR. TINNIN. The gentleman is mistaken about that.

MR. ANDREWS. Mr. President: I think both of the gentlemen are mistaken in relation to the time the apportionment will be made. Under the plan adopted, or about to be adopted, there would be a Legislature in eighteen hundred and eighty; there would also be a Legislature that would convene in eighteen hundred and eighty-one. That Legislature that will convene in eighteen hundred and eighty-one will have the official census upon which it may base the apportionment. It is contemplated in this that the apportionment will be made by the Legislature of eighteen hundred and eighty-one; am I not correct?

MR. TINNIN. You could not get an election until eighteen hundred and eighty-two.

MR. ANDREWS. Certainly not; but then they will have the official census, and it would be the first apportionment made under the new Constitution.

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REMARKS OF MR. AYERS.

MR. AYERS. Mr President: We have got into a very serious snarl here, and it seems to me that the easiest way to get out of it would be to return to the original report of the committee; we can settle this matter right in Convention by doing so, otherwise we have got to refer this back to the Committee of the Whole, and we have got to have a new apportionment. I do not believe that the representatives of this State, from the disfranchised counties, will be satisfied to go on for six years more with the apportionment which now prevails. I am willing, for one, and I think there are many gentlemen on this floor representing counties that are now inadequtely represented, who are willing to take the report of the Committee on Legislative Department as it was reported and adopted. It will give us at least fair representation and that is what is not proposed to be given by the amendment before us.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. I do not see how we can go back to that report, unless it shall be changed as to the number of Senators and Assemblymen. The districting of the State, in that report, is upon the basis of thirty Senators and sixty Assemblymen, while the Convention has determined to have forty and eighty; consequently it is impossible to take the report of the committee. It is a very tedious task to undertake to go through and make forty and eighty districts instead of thirty and sixty districts. As for waiting for six years, the first election that would take place under the new apportionment would be in eighteen hundred and eighty-two, and that cannot be over three years at the outside, and then there would be an election under the new apportionment. I do not see how we can arrive at it in any shorter time than that. The Legislature of eighteen hundred and eighty-one at the least would redistrict and reapportion the State. I do not see any other way to get out of this difficulty. It is impossible to arrive at a numerically correct apportionment in this Convention, for the simple reason that we have no satisfactory data upon which to base an apportionment. We have only to wait until eighteen hundred and eighty-two, and we can elect under the new apportionment.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I am decidedly in favor of going back to the report of the original committee. That report is perfect in all its parts, and all we have to do is to refuse to concur in the amendments made in the Committee of the Whole. Five or six sections embody the whole plan. I am satisfied that it would be cheaper for the State to have thirty and sixty, instead of forty and eighty. Such a large body of men will not do the work so well. This Convention is an illustration of that fact. In my county we have two Senators and three representatives. I am satisfied that we would have one Senator and two representatives. We would be more careful in the selection of these men. As it is now, we get one or two good men and throw in the rest for filling. When we have a few, we know that we must send the men who are best qualified for the work in hand. I hope the Convention will go back to the original plan. Then there is a fair apportionment and everything that works harmoniously and well. But with this plan we have got to patch out and amend it, and it is next to impossible to perfect it.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: When it is in order I propose to offer as a substitute for this section, section five of the report of the Committee on Legislative Department, if the motion of the gentleman from Trinity shall be voted down. I entirely concur with the views expressed by the gentleman from Los Angeles, and by the gentleman from Santa Clara, that this whole difficulty has originated in departing from the report of the Committee on Legislative Department in this respect. I hope, sir, that we will vote down the proposition of the gentleman from Trinity, and return to section five, of the article reported by the Committee on Legislative Department, which reads as follows:

"SEC. 5. The Senate shall consist of thirty members, and the Assembly of sixty members, to be elected by districts, as hereinafter provided. The seats of the fifteen Senators from the odd number districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the second year, so that one half of the Senate, after the first election, shall be chosen every two years."

The gentleman from San Diego is in error in saying that the Convention has agreed to any other principle. That is the very point we are now considering. The Committee of the Whole saw proper to strike out thirty and insert forty, and that is the very thing that we propose now to correct. If we do make this correction, then section six of the article, as reported by the Committee on Legislative Department, making the apportionment, can be amended if objectionable, and the whole system will be harmonious. Then we will have an apportionment at this time, instead of three, four, five, or six years hence, as may happen under certain contingencies. It is assumed here that the time is too precious. I say, that on the basis I refer to, it could be changed by referring it to a committee that would report back to-morrow morning a proper apportionment of the State. There has been some objection to the apportionment of the committee. Those gentlemen who complain that it is not just can appear before the committee.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: In the shape in which sections five and six now are everybody can see that there is a very plain and decided conflict, which this amendment of the gentleman from Trinity, Mr. Tinnin, seeks to obviate, by a very reasonable amendment. Now, sir, it seems to me that there cannot be anything very dangerous in allowing the holdover Senators, who have already been elected for four years, to finish out their terms, and section five can be easily so amended as to have these holdover Senators finish out their terms, and still perfectly harmonize with section six. Now, sir, I am in favor of the amendment offered by the gentleman from Trinity, if it is the best we can get, and I am inclined to think that it is the best we can get. I shall therefore vote for it, but if it is lost, I shall offer an amendment, the effect of which shall be to keep in office the present holdover Senators for the remainder of their terms, and to elect simply one half of the State Senators at the first election under the new Constitution. I am not one of those who are in favor of tipping all the offices in the State upside down. I see no reason why the Senators who have been elected by the people of this State should not be allowed to serve out their whole term. I believe they are good and respectable men.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: If we go back again to the report of the Committee on Legislative Department I am afraid we shall occupy at least a week here on this question of apportionment. I think we had better stand by the action of the Committee of the Whole and continue the present apportionment until we have the census of eighteen hundred and eighty. I think it is decidedly bad policy for us here now at this late stage in our proceedings to go back and enter into an interminable wrangle over that question. Immediately after the census of eighteen hundred and eighty the Legislature will meet in eighteen hundred and eighty-one, and a new apportionment can be made.

MR. AYERS. The census will be taken in eighteen hundred and eighty, and the Legislature may meet early in eighteen hundred and eighty-one, and the census will not be published until about eighteen hundred and eighty-two.

MR. VAN DYKE. There is no difficulty in the world in getting the population statistics. The reason that the publication is delayed is the various other statistics.

MR. AYERS. Are you familiar with that kind of business?

MR. VAN DYKE. Yes, sir. There is a great deal of red tape about the various other statistics. But there is no difficulty in getting the population statistics to base their action upon.

MR. MCCALLUM. What provision has been adopted for the meeting of the Legislature in eighteen hundred and eighty-one? How much time do you think it will take to correct blunders in Committee of the Whole, more than would be required to apportion the State?

MR. VAN DYKE. I have this to say, that so far as Alameda County is concerned of course that report would be slightly better for us than the present; but does not the gentleman know that other counties will want to have their representation adjusted, and that we will be at least a week here before we can get through with that apportionment. That is based entirely upon election returns, and we have already had in Committee of the Whole a sufficient demonstration that other counties are not satisfied with that apportionment, and the result is that this county and that county will wish to have their apportionment raised, and we shall occupy a week's time.

MR. MCCALLUM. At what time under the Tinnin amendment would the apportionment be made?

MR. VAN DYKE. In eighteen hundred and eighty-one. We have got to resort to this in order to change our elections from the odd to the even years. That is the scheme as I understand it. I do not see any objection to having all the Senators elected for three years. Then the classification can be made upon the basis of the census of eighteen hundred and eighty. This gives us the present apportionment until we have the proper basis for another apportionment; that is, the United States census. I call the gentleman's attention to the fact that, under section six, as adopted in Committee of the Whole, it provides that the apportionment shall be based upon the Federal census of eighteen hundred and eighty and every ten years thereafter.

MR. TINNIN. There will be an amendment offered to section six that will correct any difficulty.

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. President: I hope that the Convention will not go back of the report of the Committee of the Whole. There were objections enough to that. I am in favor of holding on to the proposition for forty Senators and eighty Assemblymen. So far as a reapportionment is concerned, I think it is impracticable. If we undertake to do that we find ourselves at this late day putting out upon a very stormy sea. The inequalities always obtain in a new State, and it is not customary to reapportion for these inequalities. In the Northwestern States these grievances have been felt, but every Legislature does not redistrict the State. We must stand these inequalities until another census is taken. My friend, Judge Crouch, represents Napa. He stands here ready, I suppose, as soon as the representation of Alameda and Los Angeles is increased, to ask another representative for Napa. Napa would be allowed another representative on the same basis. I hope that we will not start out on any such wild scheme as that. I am decidedly in favor of the amendment offered by the gentleman from Trinity.

MR. MURPHY. Mr. President: If I have an opportunity, I will offer a substitute which will cure the whole thing. I will offer it if this amendment is voted down.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Trinity, Mr. Tinnin.

Upon the adoption of which the ayes and noes were demanded by Messrs. Ayers, Tinnin, Wyatt, Brown, and Condon.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Biggs,	Burt,
Barbour,	Blackmer,	Campbell,
Barry,	Boggs,	Chapman,
Beerstecher,	Boucher,	Charles,
Bell,	Brown,	Condon,

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Cowden,	Johnson,	Schomp,
Cross,	Jones,	Shafter,
Crouch,	Joyce,	Shurtleff,
Davis,	Kelley,	Smith, of San Francisco,
Dean,	Kenny,	Stedman,
Dowling,	Keyes,	Steele,
Dudley, of Solano,	Kleine,	Stevenson,
Dunlap,	Lampson,	Stuart,
Estee,	Larkin,	Sweasey,
Estey,	Larue,	Swenson,
Evey,	Lavigne,	Swing,
Farrell,	Lindow,	Thompson,
Filcher,	Martin, of Alameda,	Tinnin,
Freud,	Martin, of Santa Cruz,	Townsend,
Glascock,	McConnell,	Turner,
Gorman,	McCoy,	Tuttle,
Grace,	McNutt,	Vacquerel,
Harrison,	Nason,	Van Dyke,
Heiskell,	Nelson,	Van Voorhies,
Herold,	Neunaber,	Walker, of Tuolumne,
Hilborn,	Ohleyer,	Waters,
Hitchcock,	O'Sullivan,	Webster,
Holmes,	Reddy,	Wellin,
Howard, of Mariposa,	Reed,	Wickes,
Huestis,	Rhodes,	White,
Hunter,	Ringgold,	Wilson, of Tehama
Inman,	Schell,	Wyatt—96.

NOES.

Ayers,	Mansfield,	Smith, of 4th District,
Garvey,	McCallum,	Soule,
Gregg,	McComas,	Tully,
Laine,	Reynolds,	West,
Lewis,	Smith, of Santa Clara,	Mr. President—15.

The amendment, as amended, was then concurred in.

THE PRESIDENT. The Secretary will read the amendment to section six, proposed by the Committee of the Whole.

THE SECRETARY read:

"SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Legislative districts. Each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to forty, inclusive, in numerical order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of said districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the Legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district. Until such adjustment shall be made, the apportionment now provided by law shall continue in force."

THE PRESIDENT. The Secretary will read the amendment to that amendment proposed by the gentleman from Stanislaus, Mr. Schell.

ASSEMBLY DISTRICTS.

THE SECRETARY read:

"Insert after the word 'forty,' in line two, the words 'Senatorial and and eighty Assembly.' Also, strike out the word 'Legislative,' and insert 'Senatorial and Assembly.' Insert after the word 'each,' in line four, the word 'Senatorial,' and strike out from same line the words 'two members of the Assembly,' and insert 'each Assembly district shall choose one member of Assembly.' Also, insert after the word 'the,' in line five, the word 'Senatorial,' and after the word 'order,' in line six, insert the words 'and the Assembly districts shall be numbered from one to eighty in the same order.'"

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: If that amendment be adopted it will read like this: "For the purpose of choosing members of the Legislature, the State shall be divided into forty Senatorial and eighty Assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Senatorial and Assembly districts. Each Senatorial district shall choose one Senator, and each Assembly district shall choose one member of Assembly. The Senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the Assembly districts shall be numbered from one to eighty, in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof." That is as far as the amendment affects it. Now, if the amendment of the Committee of the Whole should be adopted, then where Senatorial districts are composed of more than one county, the Assemblymen must necessarily be elected by a joint ticket from all the counties comprised in the Senatorial district, and hence it will deprive some counties of a direct representation. I know that in my section it will not be satisfactory at all to the people as it is. I will give an illustration of how it would work. The fifth Senatorial district, in which I reside, is composed of the counties of Mariposa, Merced, and Stanislaus. Stanislaus now has one Assemblyman, and the counties of Merced and Mariposa are an Assembly district, and elect one member of the Assembly. Now, sir, under this section we must elect by joint ticket from the three counties two Assemblymen. That we object to. The county in which I reside is entitled to an Assemblyman, and we desire to elect our own Assemblyman. It might follow that the counties of Mariposa and Merced may furnish the Senator and the two Assemblymen, and thus the county of Stanislaus would be wholly unrepresented in the Legislature. Now, I say that a system having a possible result of that kind is not a proper one to be pursued in my judgment.

MR. MCCALLUM. How about a county that elects more than one Assemblyman?

MR. SCHELL. That would be a matter for the Legislature to adjust, under this provision. Perhaps it would be better to provide that no county should be divided into Assembly districts; allowing each county, if entitled to more than one Assemblyman, to elect by general ticket of that county. But what I do object to is, that one county shall be joined with another county in the election of Assemblymen where a county is entitled to an Assemblyman by itself. I say that this section six, as reported by the Committee of the Whole, would work an injustice, and it is not a fair and proper representation in the legislative body of this State. Now, if there is any objection to dividing a State into eighty Assembly districts, numbering them from one to eighty, that part of it may be altered, but this part of it I think the Convention ought to insist upon: that counties that are entitled to an Assemblyman should be entitled to elect that Assemblyman without joining to other counties for that purpose.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: This would result in cutting up the State into a great number of small districts. It is quite impossible to divide the State into this number of districts. The committee found it a difficult matter to divide the State into thirty districts. It would be more difficult to divide it into forty. To divide it into eighty would be quite impossible. The best plan to adopt is the one that will be as near just as possible, but it is impossible to have districts composed of contiguous territory without dividing counties and joining parts of counties into districts. We declare in this section that, "in the formation of said districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district." There was some objections that had to be overcome. Some gentlemen representing some of the counties desired that there should be a county representation; that no basis of representation in the Assembly should be adopted that would not give each county one representative. Well, we disposed of the representative character of the apportionment. Then that difficulty had to be looked out for, and finally it was resolved, both by the Legislative Committee and the Committee of the Whole, to resort to this districting the State into forty districts, and to elect representatives from the same districts. I do not see how that scheme can be bettered. It is said that two counties will be joined to elect a Senator and two representatives, and there will be a difficulty as to who shall have one, or two, or all of these representatives. Well, if the people cannot settle that among themselves, who can? Certainly not this Convention, unless the State be divided into these infinitessimal districts to the number of eighty. If you undertake to do that you will have to join parts of counties with other counties. It cannot otherwise be done, and then the same difficulty will arise whether the county or the part of the county shall have the representative. The same difficulty will have to be settled by the people as if this was adopted. I have no pet scheme or ideas concerning this matter, except to adopt the plan that will be as nearly uniform as possible, and work as little hardship and as little difficulty.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President. I see the objection which the gentleman from Stanislaus, Judge Schell, wishes to obviate, and I think it can be reached by an amendment like this. Instead of having the State cut up into Assembly districts, we could put in after the word "Assembly," in the fifth line, this: "provided that where a Senatorial district shall be composed of two or more counties, the members of Assembly for the said Senatorial district may be separately elected." I think that would reach the same end, and would obviate the necessity of dividing the whole State into eighty Assembly districts, and numbering them consecutively. Now in San Francisco, Santa Clara, Alameda, and the large counties it would be very objectionable to divide them into Assembly districts.

MR. HEISKELL. I would sugggest that these words be put in after the word Assembly: "provided that where a county is entitled to one or more Assemblymen, they shall be elected by the county at large," that would obviate the difficulty.

MR. VAN DYKE. That is the proposition that I suggest. That is, where a Senatorial district is composed of two or more counties, the Assemblymen from that district are to be elected separately.

MR. HEISKELL. There was an objection raised that perhaps it would cut up the counties into Assembly districts. This would provide for that.

MR. VAN DYKE. That would result in the same practice that we have now, which is, I believe, very satisfactory. That is, if it is composed of two counties nearly equal in population, each one elects an Assemblyman. I understand Judge Schell to be in favor of that practice as it at present exists, and I understand his amendment is addressed to that end. But I object to his amendment to the extent that it divides the whole State into Assembly districts. That is where a county is sufficiently large to have one or more Senatorial districts, it is unnecessary to divide it into Assembly districts. I am in favor of giving each of the counties a chance to be represented in the Assembly, separately.

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I think some such proviso as this would cover the whole thing, and allow the whole State to be represented as at present.

MR. HEISKELL. Mr. President: I do not see that the gentleman from Alameda has presented any objection to Judge Schell's amendment. There is no objection to the numbering of them, and the only objection that I see which has any weight is that it may necessitate the cutting up of the larger counties into Senatorial districts. If Judge Schell would accept this amendment I think it would obviate that difficulty: "provided that where a county is entitled to one or more Assemblymen they shall be elected by the county at large."

MR. SCHELL. I have no objection to that.

MR. WYATT. I object to that.

MR. JOHNSON. I would suggest to the gentleman whether or not it would not be better, instead of making the number of Assembly districts arbitrarily eighty, to let them be numbered from one upward, as the Legislature may direct, leaving the numbering entirely with the Legislature?

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: I hope that the amendment proposed by the gentleman from Stanislaus to Judge Schell's amendment will not be accepted, and will not prevail. I am in favor of the amendment as offered by Judge Schell: that the State shall be divided into forty Senatorial and eighty Representative districts. In Committee of the Whole I proposed that each county should have at least one representative in the Legislature of this State, and I was met by the objection then that we were not representing territory, but population; that the counties were not entitled to representatives until they had enough people; that whenever you could find enough people they were entitled to a representative. I am, therefore, in favor of carrying out this proposition of the Committee of the Whole: that where a population is entitled to a representative they shall have it, wherever you find them, whether they constitute two counties or the twentieth part of one county. I am in favor of it for the further reason that it gives a better minority representation than any other character of representation except providing for a minority representation. I am entirely opposed to leaving it to the Legislature to say that one third of the members coming to this house of representatives, from the City of San Francisco, shall come entirely from the dominant party of the City of San Francisco; and we know that is exactly what they do say and what they will say. I am, therefore, in favor of cutting up the territory of the State into such districts as the population of the State entitles them to representation, and electing Senators and Assemblymen from them. Then it is that we will have represented on this floor every shade of opinion, every great interest, every character of thought. Every community will have a representative and a voice upon this floor. I hope that the amendment of Judge Schell will be sustained by this Convention, and be incorporated as one of the foundation stones of the work of this Convention.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: The proposition to select members of the Assembly from separate districts and Senators from Senatorial districts is not a new matter. It is a matter that has been discussed in every apportionment. It is the true policy. No man should be allowed to vote for more than one Senator. No community should select one third or one quarter of a Legislature under the control of one party. If so you might as well place your Legislature under the control of that interest that nominates the ticket. Take San Francisco itself. Divide San Francisco as it would be compelled to divide itself and there will be no trouble. This policy will give each party a portion of the local government, and a representation in the State Legislature. You have declared that you will not allow counties to be represented here without having sufficient population to be represented. Two of these constitute a Senatorial district, and in that way Conventions are manipulated and your Legislature controlled. This is the only true plan. My objection to the section as it stands is based upon the ground taken by the gentleman from Monterey. I would now oppose any measure that did not provide that the Legislature, upon each census being taken, should redistrict the State according to population. Alameda is divided now into five or six Supervisor districts. You have divisions in San Francisco, and if you select from these divisions you will have the right men. Bring your government home to the people—the nearer the better.

MR. REYNOLDS. I want to ask the gentleman how he will divide San Francisco into these small districts?

MR. LARKIN. I would divide it as it is divided for Supervisor districts.

MR. REYNOLDS. Then you would fall into the same difficulty.

MR. LARKIN. We have provided for a Legislature for general purposes and not for local matters. These matters are all delegated to the counties. Now, we want to send men to the Legislature that will represent the interests of the State. The true interest of every county is to have it divided into districts. There is no trouble about it. The nearer you can bring your representatives to the people the more responsibility they feel. Bring it down so that the people will know their representatives; so that they will select men that will truly represent their interests.

MR. TOWNSEND. Mr. President: I move to refer section six to the Committee on Legislative Department, with instructions to reconstruct the same so as to conform to the action of the Convention.

MR. GREGG. Mr. President: I agree with Mr. Larkin for once, that no man should vote for more than one Assemblyman, and the only thing now to determine is whether one Assemblyman shall be voted for by one voter, or more, at one time? If it is desirable to elect two Assemblymen in one district, and one voter vote for both, let us say so; if it is not, let us adopt the amendment of Mr. Schell. I am in favor of the amendment of Mr. Schell. Let one voter only vote for one Assemblyman. You can divide San Francisco by wards, and counties by townships, just as well as you can divide the State by Senatorial districts. Another method would be to throw the legislative power into the hands of parties by massing the votes upon two or three Senators; that is an unfair representation. I hope the amendment of Mr. Schell will be adopted as offered. Divide the State into eighty Assembly and forty Senatorial districts; that is the only fair method.

THE PRESIDENT. The Chair decides that the motion of the gentleman from Mendocino is not in order, because if it is carried it will take the whole report back with it.

MR. WHITE. Mr. President: I desire to speak a word in favor of the amendment of Judge Schell. In my district there are three Assemmen and one Senator. Suppose we are reduced to two Assemblymen, they might both come from one county, and the district is about two hundred miles long. Two of the Assemblymen might come from one end of the district. There is no difficulty in dividing the State into Assembly districts. They can be divided by townships and precincts, and then they represent a minority as well as the majority upon this floor. I think it will work well for the whole State; I hope, therefore, that Judge Schell's amendment, pure and simple, will be adopted.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Stanislaus, Mr. Schell.

The amendment was adopted, on a division, by a vote of 64 ayes to 24 noes.

MR. BEERSTECHER. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend by striking out the words 'But in making such adjustment, no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I move to strike out these words, because, in forming the population of a district, every inhabitant is counted; and that is not only the case in this State, but it is the case in every State in the Union. This matter was argued at some length in Committee of the Whole, and arguments at that time were brought to bear which were unanswered, and are unanswerable. Representation is based upon population, and that population is not simply composed of the voting inhabitants of a district. It is not confined to the voting inhabitants of the district, but it is based upon the actual residents; that is to say, the inhabitants of the district. Now, this section, as it now reads, will prevent the counting of the Chinese inhabitants; but at the same time, in the City of San Francisco, where we have a Chinese population of about thirty thousand, we are obliged to supervise them with our police force. We are obliged to have sanitary measures to guard against disease and pestilence. We are obliged to take care of them in sickness, and to guard them in health. The taxpayers of San Francisco are obliged to maintain them as a part and parcel of the inhabitants of that city. It is an injustice to say that these people, whom the taxpayers are obliged to pay their money for, and who are an integral part of that municipality, shall not be counted as inhabitants thereof. They are inhabitants. It cannot be denied but what they are inhabitants of San Francisco, as the white men are, and in forming a basis for representation in the Legislature of this State, they should be counted, after the adoption of this Constitution, just as they are counted to-day. Of course, we expect to get rid of them. We expect to drive them out. We expect the day will come when there will be no Chinamen in San Francisco. We look forward with hope to that day. But just so long as the Chinese are there, and that city is obliged to take care of them, just that long ought they to be counted in making up the basis of representation. They are counted to-day. They always have been counted, not only in San Francisco, but in the counties and the outside municipalities in this State. I protest, on behalf of San Francisco, against cutting off the basis of representation of from twenty-five thousand to thirty thousand inhabitants of that city who are just as much inhabitants to-day as any white man there. It is unjust. It ought not to be incorporated into the Constitution. It is cutting off the representation of San Francisco, to which she is justly and equitably entitled.

MR. LARKIN. If this population is entitled to representation they ought to have their own representatives, and Colonel Bee would be entitled to come here and represent them.

MR. BEERSTECHER. If you are talking for buncombe, it will do very well; but you know very well that the Chinese form a part of the basis of representation all over this State.

MR. LARKIN. I do not generally talk for buncombe.

MR. DOWLING. How long do you expect to keep the Chinese in San Francisco?

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I am certainly in favor of this proposition. If there is a population among us that we do not believe are capable of self-government, that will not assimilate with us, that the whole people of the State and of the United States are seeking to turn back from us, we certainly do not want them represented in our legislative halls, either directly or indirectly, either by their chosen representatives, or by the people who would seek to represent them. The Indians that roam in the mountains have as much right to representation. Consistency demands of us, and demands of the gentleman from San Francisco that we shall base representation upon citizenship, and those eligible to become citizens. I cannot conceive how any man who is opposed to the Chinese settling in this State should argue that the communities where they reside shall be represented on account of their residence. It is inconsistent. For my part I shall as readily vote for this proposition as any proposition in this Constitution.

MR. BEERSTECHER. I would ask the gentleman if he does not know that San Francisco will lose several Senators and a large number of Assemblymen?

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MR. LARKIN. Who would they represent? They would represent a cancer in your midst. Sacramento may lose, but they do not want to be represented by a cancer. They want to be represented by men eligible to become citizens.

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

MR. BIGGS. Yes, give us the ayes and noes. We want to know who wants Chinese representation.

The ayes and noes were also demanded by Messrs. Wyatt, Larkin, Gorman, O'Sullivan, and Lindow.

The roll was called, and the amendment rejected by the following vote:

AYES.

Beerstecher,	Stuart,	Thompson,
Campbell,	Swenson,	Mr. President—7.
Ringgold,		

NOES.

Andrews,	Holmes,	Ohleyer,
Ayers,	Howard, of Los Angeles,	O'Sullivan,
Barbour,	Howard, of Mariposa,	Pulliam,
Barry,	Huestis,	Reed,
Belcher,	Hughey,	Reynolds,
Bell,	Hunter,	Rhodes,
Biggs,	Inman,	Schell,
Blackmer,	Johnson,	Schomp,
Boggs,	Jones,	Shafter,
Boucher,	Joyce,	Shurtleff,
Brown,	Kelley,	Smith, of Santa Clara,
Burt,	Kenny,	Smith, of 4th District,
Caples,	Keyes,	Smith, of San Francisco,
Chapman,	Kleine,	Soule,
Condon,	Laine,	Stedman,
Cross,	Lampson,	Steele,
Davis,	Larkin,	Stevenson,
Dowling,	Larue,	Sweasey,
Dudley, of Solano,	Lavigne,	Swing,
Dunlap,	Lewis,	Tinnin,
Estee,	Lindow,	Townsend,
Estey,	Mansfield,	Tully,
Evey,	Martin, of Alameda,	Turner,
Farrell,	Martin, of Santa Cruz,	Tuttle,
Filcher,	McCallum,	Vacquerel,
Freud,	McComas,	Van Dyke,
Garvey,	McConnell,	Van Voorhies,
Glascock,	McCoy,	Walker, of Tuolumne,
Gorman,	McFarland,	Waters,
Grace,	McNutt,	Webster,
Gregg,	Morse,	West,
Harrison,	Murphy,	Wickes,
Heiskell,	Nason,	White,
Herold,	Nelson,	Wilson, of Tehama,
Hilborn,	Neunaber,	Wyatt—106.
Hitchcock,		

MR. LAINE. Mr. President: I offer an amendment:

THE SECRETARY read:

"Strike out all after the words 'until such,' and insert 'districting herein provided for shall be made, Senators and Assemblymen shall be elected by the districts, and according to the apportionment now provided for by law.'"

Adopted.

MR. ANDREWS. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section six by striking out all after the word 'district,' in line eleven, to and including the word 'districts,' in line fourteen, and inserting as follows: 'The enumeration of the inhabitants of this State shall be taken under the direction of the Legislature in the year eighteen hundred and eighty-five, and at the end of every ten years thereafter, and shall serve as the basis of representation in both houses of the Legislature; provided, that the census that may be taken under the direction of the Congress of the United States, in the year eighteen hundred and eighty, shall serve as such basis of representation until the year eighteen hundred and eighty-five.'"

MR. TINNIN. I second the amendment.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I would call the attention of the Convention to the fact that under section six, as reported by the Committee of the Whole, the apportionment will be made upon the Federal census, the Federal enumeration of the inhabitants of this State. I call the attention of the Convention to the injustice which that would impose upon the thinly settled sections and the mountainous portions of the State. This amendment that I offer would make the section now as our present Constitution is, and would provide that the apportionment should be made upon an enumeration to be made by the State. As I have said before, the compensation allowed by the Federal Government for taking the census is not sufficient to justify any one in taking the census in the mountainous parts of the State, and it will consequently leave those parts of the State as they now are, unfairly represented. I do hope that the Convention will adopt this amendment and leave the Constitution, in that respect, as the Constitution now is.

MR. WHITE. I hope that that amendment will not be adopted for the simple reason that it would cost the State about one hundred and fifty thousand dollars every few years. It appears to me that when we have the United States census to go by every ten years it is enough.

MR. ANDREWS. I desire to ask you if you think that the question of cost ought to be taken into consideration when we are considering a question of a fair and equal representation?

MR. WHITE. I contend that we can have a fair and equal representation without it, and that we ought to take cost into consideration in everything we do here, and that the people will not be satisfied if we do not. I have invariably voted for everything that cuts down expenditure, and I mean to do so still. I think this would be the most wanton waste of money that could be made. I trust that it will be promptly voted down. I know that when the Federal census has been taken in my county it has been taken with the utmost care every time. I do not know whether the men were paid high enough for it or not. But they took it well.

MR. McCALLUM. Mr. President: The gentleman who offers this amendment is correct in saying that it is a part of the Constitution. I may also add that although it has been in the Constitution twenty-nine years, and although mandatory in its provisions, it has never been complied with. It is one of those cases where, by common consent, the Legislature has been excused from complying with a mandatory provision of the Constitution. If we insert it now, I have no doubt but what the future course will be the same as the past, and we will thereby have at least one precedent of ignoring mandatory provisions of the Constitution. It would be a dead letter if adopted. It would involve, I think, a greater expense than that mentioned by the gentleman. I think a quarter of a million each time, and I have no doubt that the United States census would be taken just as well as it would be done by State officers.

MR. SHAFTER. Mr. President: the gentleman from Alameda is slightly mistaken in fact. In eighteen hundred and sixty-three the Legislature did act upon this provision of the Constitution and passed a bill requiring a census to be taken. If you will recollect the language of the old Constitution is that the enumeration of inhabitants is to be taken under the direction of the Legislature. That bill Governor Low pocketed, contrary to the constitutional provision, and without any authority whatever. But he assigned as a reason for it the expense of taking it. The State has acquiesced in that and there has been no fault found. I for one believe that the census taken every ten years by the United States Government is as likely to represent the State correctly as one taken each intermediate five years. I hope the amendment will be voted down.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Shasta, Mr. Andrews.

The amendment was rejected.

THE PRESIDENT. The question is on concurring in the amendment reported by the Committee of the Whole as amended.

The amendment as amended was concurred in.

NOTICE.

MR. KELLY. I give notice that I will, on to-morrow, February fifth, eighteen hundred and seventy-nine, move for a reconsideration of the vote by which section six was adopted.

CHARITABLE INSTITUTIONS.

MR. HILBORN. Mr. President: I withdraw the amendment I offered to section twenty-two yesterday, and send up a substitute for it.

THE SECRETARY read:

"Insert, after the word 'institution,' in sixth line, the words, 'except such corporations and associations as shall be created for purely charitable purposes.'"

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: The proposition offered yesterday was to strike out all of this part of the section which restricted the Legislature in granting appropriations for corporations for charitable purposes. Some members of the Convention feared that it would open the doors for grants to other corporations, other than charitable corporations. Such was not my purpose, and no gentleman of the Convention would be more averse to such a result than I. This will restrict appropriations to institutions established purely for charitable purposes, and I cannot see any earthly objection to it. I believe it is one of the duties of the State to assist these charitable institutions. Gentlemen on this floor have greatly exaggerated the amount of money which is appropriated annually for those purposes. It is true that the list of institutions receiving that aid is large. I think there are about thirty of them, and the aggregate amount for the present fiscal year is less than twenty-thousand dollars for all. I do not believe that there is a like sum of money appropriated by the State that does as much good. What are these institutions? They are not steals. They are all benevolent institutions, that are conducted by good men. I will read a little from the report of the Senate Committee of last Winter. We must assume that it is correct. I wish to impress further upon the minds of the members of this Convention that this committee was hostile to appropriations, and these statements were wrung from them. I read from volume four of the Appendix, page twenty-three, as to the Old Women's Home:

"This institution is situated on Rincon Hill, in San Francisco, and is under the charge and care of the Sisters of Charity. There are now in the Home eighty-four old ladies, ranging from seventy years upwards, who are sick, crippled, helpless, and destitute of means. They are tenderly cared for by the good Sisters of Charity, and their apartments are neatly kept and look very cheerful, considering the bad ventilation of the building. Some of them were received with a little money, while the majority were received without any money at all. Any one of them are at liberty to leave the Home whenever they so desire. The Sisters of Charity in charge, and various physicians who attend the old ladies when they are sick, give their services gratuitously. And any old lady who applies for admission is received, whether she has money or not. A bequest of some five thousand dollars was left this Home, which sum went towards erecting the new building and furnishing it. The Home also assists in procuring employment for the younger class of females. The objects of the Old Ladies' Home are commendable."

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MR. TINNIN. Did not the Assembly Committee report some of these institutions unworthy?

MR. HILBORN. This did the same thing; but the Assembly Committee reported that most of them were worthy.

MR. BARBOUR. Aged and indigent persons are already provided for.

MR. HILBORN. The Prison Commission does not fall within that: "The objects of the Commission are, to assist discharged prisoners from our prisons, and amelioration of the condition of prisoners, etc. These objects of the Commission are in their character very good and deserve special mention. To carry out its objects the agent devotes his entire time to the duties required of him. He receives a list of all prisoners to be discharged during the succeeding month from the State Prison, and endeavors to see and converse with each one before his release, and acquaints himself with the character, and disposition, and necessities of each one, and gives them information, and bring them in communication with their friends, furnish them with clothes, sufficient money to live from day to day for a while after their release, and assists them in procuring employment, etc. He also attends to the wants of many of the prisoners, such as collecting money for them and attending to errands for them."

MR. LARKIN. Cannot that be attended to under the general provision for the State Prison?

Mr. HILBORN. No, sir. I refer to the Magdalen Society.

MR. TINNIN. Was it not demonstrated by the investigation that only about two thirds of the money got to the prisons?

MR. HILBORN. No, sir. This report does not show that. The report shows that a good deal was contributed besides what the State paid. Now, then, as to the Magdalen Society: "This is a society under the charge and care of the Sisters of Charity, and the Magdalen Asylum is situated at South San Francisco. There are about two hundred female inmates in this institution, and its objects are to reclaim wayward and vicious girls, who are committed there both by their parents, or the Police Judge of San Francisco. These girls are all kept at work in making linen wear and buckskin gloves, and in that manner help to earn money for the institution; and the City and County of San Francisco pays fifteen dollars per month to the society for each one of the inmates confined there by order of the Police Judge, of which there are now about eighty such inmates; therefore, taking these things into consideration, and the fact of the society being a local one, we recommend that any further appropriation be discontinued."

They must be supplied by private charity if these State appropriations are withdrawn. Now, this proposition to withdraw State aid is merely a proposition to protect the niggardly wretch who will give nothing and throw the whole burden upon the charitably inclined. I am opposed to it. There are some people who will never give a dollar for alms or for charity unless the Tax Collector goes for them. These are the people I am after. I believe there should be appropriations for agricultural societies, but if the farmers are not willing to protect themselves I see no reason why I should insist on protecting them.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: The gentleman from Solano says that there are some people who are never willing to give any money towards these charitable institutions. In answer to the gentleman, I would say that there are some people who are too willing to give the State's money to any and everything. [Applause.]

Now, Mr. President, I favored the section which authorizes the Legislature to make donations to orphan asylums. The section seems to me sufficiently broad: "provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances; such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions." I was in favor of that, and I am in favor of that now. But the amendment offered by the gentleman yesterday was so broad as to include railroad companies. The gentleman has seen fit, by the pressure brought to bear upon him, to withdraw that amendment and substitute another one. But he leaves in the State Agricultural Society——

MR. HILBORN. No, I don't.

MR. BEERSTECHER. The gentleman showed me an amendment before the opening of the session to-day, and at that time there was a clause concerning Agricultural Societies; since that time he has also stricken that out. Now, I call attention to the very report that the gentleman was reading from, only not at the same pages. I call attention to the fourth page of that report.

"This is the first time, since the State began making appropriations for charitable institutions, that any committee of the Legislature has visited them with a view to ascertaining their exact condition. The method of tacking on to the general appropriation bill this society and that association, is familiar to legislators. The Legislature has for years been making appropriations without any knowledge of the institutions they proposed to make beneficiaries. Relief societies have been hastily formed, a Board of Trustees called together, and an organization formed, for the purpose of obtaining a share of the money which was being scattered broadcast. The people of one city or county, seeing themselves taxed to support a relief society in another county, felt as though they had an equal right to subsidy, and according to all rules of equity, probably have. And this is one of the tendencies of appropriating money, raised by taxing the property of the entire State, to the use and benefit of a particular city, town, or county. If the citizens of Placer County have no relief societies, they may well object to being taxed for the support of two societies in an adjoining county. While recognizing the enterprise, unselfishness, and charity of the ladies who have charge of these institutions, and who devote their time without pay, to the work of doing good, your committee must protest, that in principle, this is all wrong, and that the State has no right to spend the people's money in any such manner. These local societies are doing a great good, but they should be supported by the people of the locality where the charity is dispensed, and not out of the State treasury. If it goes on as it has in the past, every city, town, and hamlet in the State may come to the Legislature, present their certificates of incorporation, and with just as much justice, claim their equal proportions of subsidy."

Again, on page nine of the report, speaking of what was called "The Little Sisters' Infant Shelter," the committee says:

"This asylum the committee found, after an arduous search at number five hundred and twelve Minna Street, San Francisco. It is a two-story frame dwelling house, in a locality wholly unsuited for children. The objects of the proprietress, Mrs. Jane Temple, are these: There is one large room up-stairs, fitted up with cradles, chairs, and toys, where children are taken in and cared for during the day—not at night—while the mothers go out to day's work. There are, on an average, about fifteen children, whose mothers are charged from ten cents to twenty-five cents a day for their keeping. How and by what means such an institution, with not even the guise of charity, run wholly as a private concern, ever came to be made a recipient of State alms, it is difficult to see. The annual appropriation has been one thousand dollars. Counting a maximum of fifteen children (whose mothers are compelled to pay for their keeping), that would make a per capita cost of sixty-six dollars for feeding these infants on gruel ten months out of the twenty-four. Your committee recommend that the 'Little Sisters' Infant Shelter' be stricken from the roll of State charities."

And yet this institution received from one to two thousand dollars per year aid from the State. If I had time I could multiply instances in this report. Another institution that received six hundred and twenty-two dollars and ninety-seven cents:

"After a long search your committee succeeded in tracing up and finding this so-called 'Orphan Asylum.' It is a small house owned by a woman by the name of Mrs. C. Graves, who has been conducting the house as an orphan asylum, renting out the upper story, and keeping the children down stairs in an atmosphere not at all conducive to health. There are at this time about fourteen children under her charge, some of whom pay eight dollars a month for their keeping, and others five dollars. It is not worth while to enter into a description of the premises, any more than to show with how little intelligence the Legislature has been dispensing charity. Such institutions as this are not established, in our opinion, for the purpose of dispensing charity to the orphans, but, under the cloak of charity, to provide a home and a living for some individual. The amount of money that this institution has been receiving from the State annually, is six hundred and twenty-two dollars and ninety-seven cents. There are no Trustees connected with the institution, no one who is responsible; in fact, it is not to be classed either as an orphan asylum or a place of charity. There are no books kept—not a scratch of writing to show anything about its transactions."

This was another one that was in San Francisco. Now, although I am in favor of allowing the Legislature to donate to orphan asylums, I protest against the doors of the treasury being opened and allowing such institutions to come in here. As this report says when the Legislature is about to go into session these societies are formed for the express purpose of going before the Legislature and petitioning them to donate moneys. Where there are regular established asylums for the care of orphans, and the poor and indigent, they are provided for. I protest in the name of the taxpayers of the State against the doors of the treasury being thrown open to such institutions as I have referred to. The gentleman has been obliged to recede from one position to another until he has got to this, and I hope it will be voted down.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I have only this to say in respect to this matter, that if there is to be any appropriations made for the purposes of charity, those purposes ought to be defined. I think that the sentiment ought to commend itself to this Convention, that whenever there is an appropriation to be made for any purpose whatever, or for a charitable purpose, that it should be defined in this Constitution so that we may know the extent of the charity that is to be dispensed. Now, sir, if there is no positive definition, if this matter is left ad libitum to the Legislature, then you might as well take away the keys from the public treasury of this State. This same Legislature that has been derided, this same Legislature that has been attacked on all sides in this hall, are to be accorded the privilege of unlocking the doors of the public treasury and appropriating this money just as they please, and then they call it law, they call that an appropriation made by law. I am not in favor of any such thing as that. I am in favor of this. I believe that the objects of charity specified in this section are proper objects. I do not believe that I am called here for the purpose of opposing anything like appropriating for a specific charitable object which is defined in the Constitution. Now, we have some basis to go upon there. The fact that the State has not erected buildings in which to care for orphans, half orphans, and abandoned children, for the aged and indigent, does not relieve the State from the obligation of ministering to their relief. The obligation arises not from the existence of State institutions, but from that humane principle which God has implanted in every bosom, and which responds when properly appealed to. This is the superstructure, sir, upon which these institutions have been erected, and this is the principle which should actuate us in having these appropriations made. But, sir, let the charitable object be defined constitutionally, so that we may know what it is, and not leave it to the Legislature to do anything else. I am not willing to have any indefinite charity administered by the Legislature.

MR. LAINE. Mr. President: It strikes me, sir, that if we desire to place as great a curse as possible upon the people of this State we should

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adopt a Constitution after this manner. It simply means throwing open the doors of the treasury of the State for designing persons to carry off money in the name of charity. It is not charity for five or six individuals to get together and rob the public treasury and distribute the money. It has not the semblance or garb of charity. Under that name they come here to the Legislature, with every sort of appliance, seeking to draw money from the public funds. The Legislature has no time to go to the various parts of the State, from San Diego to Siskiyou, to find out how these institutions are managed. Government was never organized to administer charities. Government is organized to protect life, liberty, and property. We are not here to legislate for these things, but to provide a government to protect life, liberty, and property. The Supreme Court of the United States, in a decision rendered not long since, held that the Legislature did not hold the public purse for any such purpose; that governments were not organized to dispense charities; that if you could not levy a tax upon the citizen directly to run one of these institutions, you have no right to steal the public money from the treasury when there and devote it to it.

MR. HILBORN. How about the Insane Asylum?

MR. LAINE. That is a government institution. It is taking care of those that may destroy the lives and property of the people of the State.

MR. HILBORN. The Deaf and Dumb and Blind Asylum?

MR. LAINE. They are also provided for in order that they shall not become paupers upon the State, and to give them a means of livelihood. But that is a State institution. The Supreme Court declared the law unconstitutional and void upon the ground that it robbed the very foundation principles of the government. So it was in the Supreme Court of the State of Massachusetts in a case there in which the Legislature of Massachusetts undertook to put money into the pockets of those who had been injured by the great fire. The Supreme Court pronounced the law null and void, and held that the Legislature did not hold the public purse for any such purpose. If there is anything more than another that will weigh down and destroy this Constitution this will be that thing. I call for the ayes and noes on this amendment.

The ayes and noes were also demanded by Messrs. McComas, Smith, of Santa Clara, Tully, and Hilborn.

The roll was called, and the amendment rejected by the following vote:

AYES.

Cowden,	Larue,	Reddy,
Garvey,	McFarland,	Reed,
Hilborn,	Murphy,	Tully—10.
Howard, of Los Angeles,		

NOES.

Andrews,	Heiskell,	Reynolds,
Ayers,	Hitchcock,	Rhodes,
Barbour,	Holmes,	Ringgold,
Barry,	Howard, of Mariposa,	Schell,
Beerstecher,	Huestis,	Schomp,
Belcher,	Hughey,	Shafter,
Bell,	Hunter,	Shurtleff,
Biggs,	Inman,	Smith, of Santa Clara,
Blackmer,	Johnson,	Smith, of 4th District,
Boggs,	Jones,	Smith, of San Francisco,
Boucher,	Joyce,	Soule,
Brown,	Kelley,	Stedman,
Burt,	Kenny,	Steele,
Campbell,	Keyes,	Stevenson,
Caples,	Kleine,	Stuart,
Chapman,	Laine,	Sweasey,
Charles,	Lampson,	Swenson,
Condon,	Larkin,	Swing,
Cross,	Lavigne,	Thompson,
Crouch,	Lewis,	Tinnin,
Davis,	Lindow,	Townsend,
Dean,	Mansfield,	Tuttle,
Dowling,	Martin, of Alameda,	Vacquerel,
Dudley, of Solano,	Martin, of Santa Cruz,	Van Dyke,
Dunlap,	McCallum,	Van Voorhies,
Estee,	McComas,	Walker, of Tuolumne,
Estey,	McConnell,	Waters,
Evey,	McCoy,	Webster,
Farrell,	McNutt,	Weller,
Filcher,	Morse,	Wellin,
Freud,	Nason,	West,
Glascock,	Nelson,	Wickes,
Gorman,	Neunaber,	White,
Grace,	Ohleyer,	Wilson, of Tehama,
Gregg,	O'Sullivan,	Wyatt,
Harrison,	Pulliam,	Mr. President—108.

STATE AGRICULTURAL SOCIETY.

MR. LARUE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert, after the word 'institutions,' in line thirteen, 'provided, that the Legislature shall have power to grant aid to the State Agricultural Society, for the purpose of fostering the agricultural resources of the State.'"

MR. MCFARLAND. Mr. President: This is a matter in which the Legislature has always heretofore exercised its discretion for the purpose of giving aid to this society. It is really a State institution, in one sense of the word. It is supported by gentlemen all over the State, and it seems to me that the Legislature might at least have the power to grant aid, if it saw fit. I do not know who are the natural guardians of the public treasury, except it be the legislators who are sent here for the people. Without aid from the State this society would probably be compelled to discontinue its existence. I doubt whether it could support itself. It affords inducements to gentlemen from all parts of the State; it affords means of intercommunication between farmers and stockraisers; and it is to a great extent a State institution. I think the Legislature ought to have the power, if it saw fit, to grant it State aid.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Sacramento, Mr. Larue.

The amendment was rejected.

MR. BARBOUR. Mr. President: I send up an amendment.

THE SECRETARY read:

"Insert, after the word 'institutions,' in line fourteen, the words, 'receiving State aid.'"

MR. BARBOUR. Mr. President: The only object of that amendment is not to put every orphan asylum under any inquisitorial visitation of the State. Of course that is the intent of the Committee of the Whole, that those receiving State aid should be under such visitation.

MR. VACQUEREL. Mr. President: I hope that the amendment will not prevail. I say that the State has a right to go and inquire into every institution there is in the State, whether they get aid or not. The State has a right to see how the business is carried on all over the State, not only in State institutions, but any other. I hope the amendment will not be adopted.

MR. WEST. Mr. President: I hope that this amendment will be made. It will then require, that those institutions receiving State aid shall be open to State investigation in regard to the management of the appropriation that is received.

MR. LAINE. Before the vote is taken I desire to call attention to one thing. It may be that we may get into a trap in this. Mr. Barbour's idea is perhaps correct. But it says "such institutions," and I think that is sufficient. I am inclined to think that the amendment may go farther than he intends.

The amendment was rejected.

SUPPORT OF ORPHANS.

MR. CAPLES. Mr. President: I offer an amendment to section twenty-two.

THE SECRETARY read:

"Strike out the words 'and proportioned to the number of,' in line twelve, and insert, 'not exceeding fifty dollars per capita of the.'"

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: It seems to me that it is desirable since we have adopted this plan of providing for the orphans, that is by donations or appropriations to private institutions, that we should fix some absolute limit beyond which the Legislature shall not go; for the reason, that without such limit past experience has proven that the amount will depend, not so much upon the needs, as upon the strength of the lobby that is brought to bear in favor of such appropriations. Such has been the experience of the past, and we, the American people, are a very apt people to learn. We improve in trickery as well as in knowledge and in virtue. It seems to me that we want to cut off that pernicious lobby, that here is a very good opportunity to make one step in that direction. These appropriations were commenced upon the basis of twenty dollars or twenty-five dollars per capita, they have gone up steadily and uniformly until it has reached one hundred dollars per capita now. Where will it go in the future? No man can answer except to say, that it will depend upon the strength of the lobby how high the appropriation will go. Is it desirable to leave the door open in this manner to the plundering of the public treasury?

MR. MURPHY. Can you support, and clothe, and educate a child for fifty dollars a year?

MR. CAPLES. Whether fifty dollars will support it or not, is not the question. The question is how much the State will contribute from the public treasury for this purpose. These institutions have, in former times, supported these orphans with a donation of twenty or twenty-five dollars per capita. It is supposed that the remaining portion was supplied by private charity. So that whether fifty dollars will or will not support these orphans is not the question. We proposed, in the Legislative Committee and in the Committee of the Whole, to provide for these orphans by institutions under the exclusive control of the State. That policy was voted down and beaten in the Committee of the Whole, and the Committee of the Whole determined to continue this practice of providing for them in private institutions, and making appropriations not absolutely wholly sufficient for their support. We adopted the principle that the State should contribute a part—should contribute something—and right there is where the amendment comes in. I propose to establish a maximum beyond which the Legislature shall not go. While fifty dollars may not be sufficient, it may, and while fifty dollars may not be more than enough, yet it may really be more than enough. I do not pretend to be posted in regard to the actual probable cost of previding for these children. But I am prepared to say this, that if it does cost one hundred dollars per capita to provide for children, there are ten thousand children in the State who are supported for a sum less than half of that. I maintain that one hundred dollars is more than is needed, and is more than the actual cost. I make the assertion, not so much upon actual mathematical data, as upon my judgment and experience of the case. To my certain knowledge hundreds and thousands of women are supporting children on an income that does not amount to one half of one hundred dollars per capita for the members of the family. If this thing is done all over the country, why can't it be done in these institutions? But it is not so much the amount, as to have some actual limit upon which the lobby influence can dip into the State Treasury. Without a maximum limit I see no reason why, in the future, the sum should not be raised to two hundred, three hundred, or five hundred dollars. Now, admitting the principle to be correct, that the State should contribute to the support of its orphans—and we have estab-

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lished that principle—is it not wise to establish a principle that will prevent corruption and lobbying, and the dishonest practices that have prevailed here before in our legislative halls? It seems to me that the proposition is too plain for discussion. It ought to be admitted as a truism that needs no elucidation and no discussion.

REMARKS OF MR. GORMAN.

MR. GORMAN. Mr. President: I hope that this amendment will not prevail. The gentleman wishes to give every orphan fifty dollars a year to support them. Now, educating the children of this State costs the State about eighty-three dollars a year per capita. But these orphans are educated and clothed, have the best nurses to attend them and take care of them, and he wishes to give fifty dollars to take care of these children. The buildings are furnished free, and these orphans are cared for and educated at seventeen dollars above the cost of merely educating a child in the common schools of the State. Now, sir, we may look at the charitable institutions throughout the United States, and we will find instead of costing fifty dollars a year for orphans it will cost in some States as high as two hundred and fifty dollars a year, where the State takes care of them—from thirty-six dollars to two hundred and fifty dollars a year in those institutions in different States—and he wishes to limit it to fifty dollars. Where does the rest of this money come from? It comes from the charitable people, who will give rather than see these little ones suffer. In San Francisco a gentleman died lately and left fifty thousand dollars to these institutions. Every year, at New Year and Christmas, you see gentlemen in this State giving five hundred dollars and two hundred and fifty dollars to assist these asylums. They give that money to support them, because the State does not support them. Now, sir, I should hope that this Convention would certainly vote this measure down. They are better taken care of than the State could possibly do it. There are ladies there who devote half of their time to taking care of these orphans. The Good Templars, the Odd Fellows, and many other societies are taking care of children in this State. It is for the love of taking care of these poor little children. It is that motherly love that will take care of them and bring them up morally, and it is a great thing to state that there has never been one of these children out of the institutions found in the State Prison at San Quentin.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I hope that the amendment of the gentleman from Sacramento will prevail. Every gentleman present who has any acquaintance with legislative matters, knows how these appropriations can be made indiscriminately and without limit. These appropriations are made for different objects, located in different parts of the State, represented by different individual members of the Legislature, and their issues are universally pooled. They are put into an omnibus bill, and it is an understanding that you vote for mine and I will vote for your little steal—I cannot call it by any other name. It increases, it produces and builds up that regular system of logrolling and legislative jobbery that has been the bane of our legislative system. It is keeping in perpetuity an abuse for which, in part, this Constitutional Convention was called—to abolish the lobby; to abolish these individual and private interests coming in here with their lobbyists and electioneering for their proportion.

I believe that the animus of this whole thing is to build up an opposition system of schools against the common schools of the State, and it has been argued on this floor that we should appropriate a sufficient amount to educate them. I claim that the public school system has got to be extended so as to include this. I believe that the State would have been better pleased with a plan separating these children entirely from the religious denominations of the State, and putting them under county control.

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. President: I need not say to this Convention that I hope this amendment will not be adopted, for my sentiments on this question are well known to every gentleman upon this floor. I believe in the present system because it is the best and most economical one. The Convention has given it the stamp of its approval by an overwhelming majority. The amendment proposes to prevent the Legislature from granting more than fifty dollars a year—one dollar per week—to feed, clothe, and care for the poor orphan. I repudiate the idea that the people of this State desire us to limit the Legislature to this scanty appropriation. I know the Convention will not adopt this mean, contemptible proposition. The gentleman from Los Angeles, Mr. West, says this is an insidious attack on the public schools. Sir, I deny that the advocates of this section are enemies of the free schools. As for myself, I shall resist to the last extremity anything that will impair our educational system. As an American I am proud of our public school system—a system which is as dear to every American as the stars upon our flag.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: We are very particular here about not taxing growing crops. I think we might tax growing crops a little for the benefit of the orphans. I believe it would be ridiculous to declare that these children are the wards of the State, and should be supported by the State, and then say: provided, that they do not eat only so much. That they must have just so many clothes, and no more. If we intend to support the orphans of this State because they are the wards of the State, and because as a question of public policy they ought to be supported by the State, then let us leave the question as to the expense to the legislative department of this government, which must make the necessary appropriation when the time comes.

MR. FILCHER. The committee originally proposed that they were the wards of the State, and that the State should support them; but, under the plan adopted, we do not propose to support them entirely.

MR. ESTEE. We are to support them entirely, if need be. I am in favor of supporting them entirely, if necessary, and I am in favor of leaving the question of expense to the legislative department of this Government, when the time comes for making these appropriations; and if fifty dollars be not enough to clothe and feed these poor orphans who have no one to clothe and feed and educate them, I am in favor of giving them seventy-five dollars, or one hundred dollars. Any other rule would be extraordinary. The idea of saying, in a Constitution, that we will support the orphans of the State if it can be done for fifty dollars a year.

MR. CAPLES. Some years back, when the first appropriations were made upon the basis of twenty-five dollars, were the children confined to twenty-five dollars during that time.

MR. ESTEE. I do not know. My theory is, and I believe the theory of the Convention is, that whenever it shall appear that there are any orphans in this State who are not properly cared for by their guardians or friends, that the State shall step in and exercise its guardianship over these orphans, take care of them, and pay for their food, clothing, and education.

MR. CAPLES. According to your argument the State should have exclusive control over the institution.

MR. ESTEE. No, sir; I have learned from some experience that the best governed public institutions in this State—if you can call them public institutions—are some of the orphan asylums, conducted and controlled by private parties, who devote their time to educating and to caring for these poor waifs, and who receive no compensation from the State; whose only ambition is to teach them in the way they should go. For one, I would spurn the idea that they should be bound to live on fifty dollars a year. Better, far better, that this Convention should economize elsewhere, in some other way; some people better pay taxes to the full value of their property; we had better limit other expenses, than to say that these children shall be cared for if they do not cost but fifty dollars apiece a year. I cannot find language to express my utter contempt, and yet speak respectfully of any such proposition. I think it is contrary to every principle of common charity, and a decent regard to the rights of government. It is the right of the people to assist those under their control that are incapable of caring for themselves. If they go one way, they grow up to be criminals; if they go the other, the State secures them for good citizens, and they will become useful members of society. I do not say that it will cost more than fifty dollars a year. Fifty dollars may, in most instances, be enough; in others, one hundred dollars may not be enough. My idea is that that is a question of legislative discretion, and I would leave that much to the future Legislatures of this State.

MR. CAPLES. Is it your theory then that, if the State, in her liberality, contributes anything towards the support of a private institution of charity, that it should contribute the whole amount necessary to carry on that institution without any other source of supply or aid?

MR. ESTEE. That is a very long question. My theory is that whenever a State finds an orphan without any friends or means of support, that the State ought to educate and feed and clothe that orphan until it is old enough to take care of itself.

MR. WEST. Isn't that the wish of those who are in favor of this amendment?

MR. ESTEE. Some of them. So far as I am concerned, if I can find a dozen honest, honorable men in this State, I care not what creed nor where their institutions are, if they are willing to assume that great responsibility, I shall be very glad, for one, to have them do it, and if they are unable to care for these children by their own private donations, the State ought to come in and assist them. But whether fifty dollars is enough for the State to appropriate, is a question for the Legislature. I believe that the Legislature have thrown away but very little money, and none for orphans. That is my experience, and I believe it is the experience of those who have been here before.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock, P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

ELEEMOSYNARY INSTITUTIONS—CONTINUED.

THE PRESIDENT. The question is on the amendment of the gentleman from Sacramento, Mr. Caples.

Lost.

MR. LARUE. Mr. President: I wish to offer an amendment.

THE SECRETARY read:

"Insert after the word 'institutions,' in line fourteen, 'provided further, that the Legislature shall have power to grant aid to the Howard Benevolent Association.'"

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Sacramento, Mr. Larue.

The ayes and noes were demanded by Messrs. Larue, Hilborn, Tully, Reddy, and Reynolds.

The roll was called, and the amendment rejected by the following vote:

AYES.

Brown,	Larue,	Murphy,
Estee,	Lewis,	Reddy,
Garvey,	McConnell,	Reynolds,
Gorman,	McFarland,	Tully
Hilborn,	Moffat,	Wellin—16.
Lampson,		

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NOES.

Andrews,	Howard, of Los Angeles,	Smith, of Santa Clara,
Ayers,	Howard, of Mariposa,	Smith, of 4th District,
Barbour,	Huestis,	Smith, of San Francisco,
Barry,	Hughey,	Soule,
Beerstecher,	Hunter,	Stedman,
Belcher,	Inman,	Steele,
Bell,	Johnson,	Stevenson,
Biggs,	Joyce,	Stuart,
Blackmer,	Kenny,	Sweasey,
Boggs,	Kleine,	Swenson,
Boucher,	Laine,	Swing,
Burt,	Larkin,	Thompson,
Caples,	Lavigne,	Tinnin,
Chapman,	Lindow,	Townsend,
Charles,	Mansfield,	Turner,
Condon,	Martin, of Alameda,	Tuttle,
Cross,	Martin, of Santa Cruz,	Vacquerel,
Davis,	McCallum,	Van Dyke,
Dean,	McComas,	Van Voorhies,
Dowling,	McNutt,	Walker, of Tuolumne,
Dudley, of Solano,	Morse,	Waters,
Evey,	Nason,	Webster,
Farrell,	Neunaber,	Weller,
Freud,	O'Donnell,	West,
Glascock,	Ohleyer,	Wickes,
Gregg,	Pulliam,	White,
Harrison,	Rhodes,	Wilson, of Tehama,
Heiskell,	Schomp,	Wyatt,
Hitchcock,	Shurtleff,	Mr. President—88.
Holmes,		

MR. TINNIN. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert next after word 'institutions,' in line fourteen, the following words: 'provided further, that whenever any county or city and county, city or town, shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city or town, shall be entitled to receive the same pro rata appropriation as may be granted to such institutions under church or other control.'"

MR. TINNIN. Mr. President: If it is desirous that communities should look out for the welfare of the orphans, I suppose the counties and towns of this State who are directly interested in their care should have the same opportunity to take care of them. I hope gentlemen will give this amendment due consideration.

MR. MURPHY. Are they not provided for now under the law? Don't they get the same pro rata?

MR. TINNIN. No, sir. There is nothing of that kind in the law, and the gentleman knows it very well too.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I hope the amendment will not be adopted. I don't think it is the object of the mover that it should be ——

MR. TINNIN. I object to that manner of argument. The gentleman has no right to impugn my motives.

MR. BIGGS. It is well known that this proposition was made here at an early day in the Committee of the Whole. I tell the gentleman this, that if he has a private asylum in Trinity County, he can receive the same aid as any other institution in the State. You have the same right in Trinity County that they have in Sacramento. I don't intend to impugn his motives, but it has been thrown in for the purpose of defeating this section. I don't say that the gentleman has done that, but it has been done time and again.

MR. WEST. When?

MR. BIGGS. You yourself had the honor to introduce an amendment to that effect.

MR. WEST. I had the honor to introduce an amendment permitting counties and cities to provide for their own orphans. That amendment only lacked two votes in the Committee of the Whole.

MR. BIGGS. That is what I said. We had similar amendments put in here. The gentlemen sent them up and they were defeated by a very small vote. I hope this Convention will stand to their guns and adopt this section just as it is. It is good enough. I don't propose to discuss this question any longer. I have discussed it before the Committee of the Whole, and now I hope the Convention will stand by their guns.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I do not consider the amendment as at all necessary, and, therefore, I shall vote against it. I think a correct reading and interpretation of section twenty-two gives the Legislature full power to grant aid to any city, or town, or township, or other subdivision of the State that can maintain any of these institutions for orphans, indigent people, and aged people.

MR. TINNIN. Show me any part of this section where anything of the kind is authorized.

MR. BEERSTECHER. Again, the amendment is not in the right place. There ought to be a change in county and township organization perhaps, but not at this time. I call attention more particularly to the section. It says:

"SEC. 22. No money shall be drawn from the treasury but in consequence of appropriation made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, half orphans or abandoned children, or aged persons in indigent circumstances; such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; provided further, that the State shall have at any time the right to inquire into the management of such institutions. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature."

That is, that notwithstanding this prohibition, the Legislature shall have power to aid these institutions conducted for the purpose of taking care of the orphans. Now, it does not say private institutions. It does not say what kind or character, but it says the Legislature shall have power to grant aid to these institutions. Now, my interpretation of that is that it makes no difference whether these are private institutions or whether they are instituted by the county or municipality. If the object is to give counties and cities the power to establish these institutions, then the amendment should be made to the article referring to cities, counties, and towns, and not here.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: The objections made by the gentleman from San Francisco I do not think well made. This amendment ought to be adopted. It provides that this aid may go to the counties, where there are no private institutions of the kind. We have no institution of that character in the county where I live, yet our county has to take care of the orphans. They have to take care of them. You are taxing our county to keep up these institutions in other counties, which saves to those counties the expense of taking care of their own orphans, while our county receives none of the benefits. We have to pay our portion of this State tax, which goes to the support of these institutions, and then we have to take care of our own orphans. The gentleman from Butte is wrong about anything in connection with this matter having been voted down. That amendment in the Committee of the Whole provided that the counties should take care of the orphans and half orphans within their limits, and then that the counties shall receive the pro rata for taking care of orphans within their limits. The gentleman from Butte says we must stand by our guns. I hope the gentleman will stand by his guns.

MR. BIGGS. Yes, sir; I will.

MR. ANDREWS. You have been talking about the poor orphans. That has been your proposition throughout, and now I ask you to stand by your guns.

MR. BIGGS. Haven't the counties the power to create orphan asylums, the same as anybody else?

MR. ANDREWS. Suppose they have not the ability to do so, and still have to take care of the orphans as they do now, sometimes by the Board of Supervisors, and sometimes by families. I ask the gentleman to stand by his guns and take care of the poor orphans. That is what I propose to do. I propose to treat all the orphans alike. If you are going to depart from the line in behalf of the orphans, follow the line out to its legitimate conclusion, and take care of them all over the State. I say it is no more than justice that this amendment should be adopted.

MR. REDDY. Are not these institutions open to the orphans of your county the same as any other county?

MR. ANDREWS. No, sir; they are not.

MR. REDDY. They certainly are.

MR. ANDREWS. Why not adopt this amendment?

MR. REDDY. You say you are taxed twice. Now are not the people of your county entitled to the same benefits precisely as the people of any other county?

MR. ANDREWS. No, sir.

MR. REDDY. State wherein you are denied a single privilege.

MR. ANDREWS. Because we have no institution of that kind in our county. Why should we not have our orphans taken care of in our own county?

MR. REDDY. I simply want to know if you have been denied any privileges?

MR. ANDREWS. Yes, sir; because we have orphans in our own county which we have to take care of.

MR. REDDY. The only difficulty is the bringing of these orphans from such a distance?

MR. ANDREWS. They might not be received when they got there. If the counties can take care of them why should they not receive their pro rata for doing so?

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. President: I do not know whether it makes any very great difference whether we adopt this amendment or not, but I want to call the attention of the gentleman from Trinity to one thing: that there seems to be a disposition here to prevent the Convention from doing what they intended to do, by throwing every obstacle in the way. Now, they ask this amendment. Perhaps the gentleman thinks he will do something very fine for his county, but we can stand it if he can, because it will permit our industrial school, which is now run at the expense of the City of San Francisco, to come under this amendment and receive State aid, and it will save us a large sum of money every year. We have never asked anything of the State, and never intended to, but under this amendment we will draw our share of the money. If you are prepared for that, why go ahead. The almshouse is another institution carried on at the expense of the City of San Francisco. We will also apply for State aid for that institution, and run it at the expense of the State. If the gentleman wants that kind of economy we can stand it as long as he can. What will the people of your county say to

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you when you go home? I tried to ask the gentleman from Los Angeles a question, and that was whether he could point to a single instance of fraud in these appropriations. He took particular pains not to answer the question, and of course let it go. I know that certain members of the Legislature, who are opposed to these donations, have tacked on appropriations for institutions that never ought to have been made, in order to break down the bill, and which the friends of the bill never wanted to make. I wonder if the gentleman from Trinity, in his legislative experience, knows anything about these odious appropriations being tacked on in order to break down the whole bill. Perhaps he has learned his lesson there, as he is an old legislator.

MR. TINNIN. I know many institutions of that kind, and I have always voted against these appropriations, and always expect to.

MR. WELLIN. Did you ever tack on odious amendments for the purpose of breaking down the bill?

MR. TINNIN. Sometimes that will show the inconsistency of a measure when nothing else will.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I am in favor of the pending amendment on the ground of justice and fair dealing. There is no good reason why these so-called orphan asylums should draw State aid for the purpose of paying for taking care of orphans and indigent persons, while the counties that perform the same services for their orphans and indigent sick, draw no pay from the State. No man can give a reason, and no man will try to give a reason why orphans taken care of by the counties, or cities, or townships, either in institutions or by private families, few or many, should not be entitled to draw from the State treasury the same rate per capita as is drawn by the so-called orphan asylums. Why not? Gentlemen say if they will build an institution for the support of orphans, they can, under this section, draw pay. But there are counties in this State that have, perhaps, but two or three, or a half a dozen orphans. Then, in order to be entitled to State aid they must build an institution. Away with such business; away with such argument. If a family of children are left orphans, the Supervisors see to it that they are taken care of in some family, where there is no institution, where they have not enough orphans to build an institution. Why should not they be entitled to the same rate of one hundred dollars per head? San Francisco, notwithstanding her boasted institutions with big names, is obliged to take care of her own orphans. Why should San Francisco not be able to draw her pro rata from the State? There is the Almshouse, built for six hundred people, the aged and indigent, and why should the State not give to that county the money towards their support. I hope the amendment will pass. It is true it will be a loss to some of these gentlemen who are seeking to make political capital out of the poor orphan. It is true there will be a loss to some candidates for Governor and Lieutenant-Governor. But don't take me in if you please. I am in favor of this for another reason, and why? Because this is an appropriation for sectarian schools in disguise. We are seeking to make political capital out of—great God—the poor orphan. Why talk about the railroads and Leland Stanford? We have never seen a lobby in this House until the poor orphan comes up. It means, sir, nothing in the world but sectarian schools and church schools in disguise. Now, sir, if it does not mean that I call upon you to pass this amendment. If it is not so, then adopt this amendment and give it contradiction.

REMARKS OF MR. MURPHY.

MR. MURPHY. Mr. President: I am opposed to the adoption of this amendment upon the ground that under the law at the present time, because any county in the State can receive pay from the State for taking care of orphans if they do so. Every whole orphan can draw one hundred dollars per annum, and every half orphan or abandoned child can draw seventy-five dollars; provided, that no asylum with less than twenty inmates shall be entitled to State aid. That is the only restriction there is in the law at the present time.

MR. TINNIN. That is the old law, and we propose to change the law.

MR. MURPHY. I don't propose to change the law.

MR. REYNOLDS. Each institution is to have twenty inmates.

MR. MURPHY. In the notice presented by the gentleman from San Francisco, there would be applications for fifty thousand orphans. Every family in which the father or mother happened to be dead would apply for aid.

MR. REYNOLDS. And why should they not have it?

MR. MURPHY. Now, sir, in the first place, I contend that the people do not ask for this change. I visited my county Christmas, and I found the people, one and all, opposed to it, and obeying the wishes of my people, I am bound to vote against that amendment, or any amendment that will interfere with or deprive the orphans of their just proportion of State money. The gentleman has gone to a considerable length in declaring that this is a measure in behalf of sectarian schools. I repudiate the idea. I scorn the idea of raising the cry of sectarian schools upon the floor of this House. I am an American, myself, in every sense of the word—born and raised here. I have as much reverence and regard for the public school system as any gentleman upon this floor. I would never vote for anything that would tear down the palladium of American liberty—the public school system—but this matter has nothing to do with religion whatever. It is not a question of religion. The so-called orphan asylums, said the gentleman, using that sneering expression towards the noble women who have devoted their lives to the care of the poor and the afflicted, when they meet a poor orphan on the street, do they ask the religion of the parents? No, they ask it if it is hungry, and care for it, and clothe it, and feed it. If they did differently, I would cast my vote against making these appropriations, but I know the contrary to be the fact. How can we be making political capital by standing up here and pleading for these poor orphans? They have no influential friends. I think it is the other side who are trying to make political capital. Such an assertion as that is false. We are voting here for what we believe to be right, and such a charge as that is false in every particular, and no man possessing the feelings of a gentleman, no man with any regard for principle and truth, would utter such words.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. President: The gentleman from Del Norte says the orphans have no friends. Then would it not be popular to oppose them, and the demagogues would be likely to be on the other side. The gentleman speaks of an institution known as the Almshouse. Now, the gentleman has been long enough in the State of California, and around the City of San Francisco, to know that at the last session of the Legislature a corrupt lobby saved the Superintendent of that institution.

MR. REYNOLDS. It was the Democratic party who wanted to get it into politics.

MR. JOYCE. I do not know anything about the politics. I know there was such a thing. Now, sir, he has been talking economy upon a great many occasions. But this is not economy. Does he want every widow and every man in this State whose wife is dead to make application to the State treasury for assistance. Why all our widows would become managers of orphan asylums. It would be impossible. And that the Legislature could tend to all their wants in sixty days is preposterous, inconsistent. I am well pleased that this is the last chance for the Almshouse. Make the most of it for this is the last chance. It is the last place for a man to go.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I took no part in this discussion in the Committee of the Whole, nor do I intend to discuss it now, but merely to state the question as I understand it. The Legislative Committee saw proper to recommend this section. In the Committee of the Whole, by a very large majority that section was amended. The argument which seemed to prevail and have the weight was this: that inasmuch as the State had no institution in which to care for those who are properly wards of the State, and as it was shown that they could be supported by private charity more economically than they could be supported by the State, this amendment was adopted. I believe that those were the controlling reasons. As to the motives of the gentlemen voting with the majority I have nothing to say, except this: that whatever may have been the motives of a few, I am satisfied the motives of the great majority were honest and sincere. Legislatures have been known in times past as "the Legislature of a thousand privileged questions," and "the Legislature of a thousand drinks" I hope this Convention may not be known as the Convention of a thousand discourtesies.

MR. VAN DYKE. It is more apt to be known as the Convention of a thousand speeches. [Laughter.]

MR. MCCALLUM. Now, if these are the wards of the State, they ought to be suppported by the State, and not by the counties. If the County of Alameda, or any other county, chooses to establish an orphan asylum, there is no good reason why that asylum should not receive the same aid as any private institution. Is not that just? Is it not in complete harmony with the action of the Committee of the Whole? There was one point made here, and that was whether the counties would not have that privilege under the section as it now stands by a fair construction of the language. There is one objection I see to the language. It says the Legislature shall have power to grant aid to such institutions. Now, the aid is granted to the society, or association, and not to the institution. Suppose you simply strike out the word "to," and insert the word "for," would it not cover the whole matter.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. President: I would like to know the true inwardness of this amendment. I would like to hear some reason why this amendment should be adopted. Is it economy? Will the gentleman answer that question?

MR. TINNIN. It is economy; and it is a right of the counties to take care of their own orphans.

MR. REDDY. Economy to whom?

MR. TINNIN. To the people of these counties.

MR. REDDY. It would not save a dollar to the State. The only reason that can be assigned for it is on the ground of speculation, it cannot be on the ground of economy. You can only place it upon one ground, and that is, that the Board of Supervisors may have a chance to speculate at the expense of the poor orphan. Has the gentleman got the welfare of the orphan in his mind when he offers this amendment, or has he only a blind prejudice against religion?

MR. TINNIN. In answer I will say that I have no prejudice against religion. It is a matter that bothers me very little.

MR. REDDY. I prefer to judge the gentleman by his acts. If he can assign any other reason then I may stand corrected. I defy him to put it upon any other reasonable ground than the one I have named. Now is it for the welfare of the orphans to turn them over to the Supervisors in order that they may speculate in their wants?

MR. TINNIN. Why would it not be as proper to turn them over to the Board of Supervisors, who are their neighbors and friends, as to send them to remote parts of the State and turn them over to strangers?

MR. REDDY. They are unfit persons to do this kind of work. Look at this. It is not in the interests of the morals of the children to have them turned over to county institutions managed by politicians. Why should we seek to take these children away from these institutions where they have always been well taken care of? There is no complaint upon that ground. Then why should we take them away? Nor should we attempt to starve out these institutions, by attempting to make them live on fifty dollars a year? When you cannot get these little fellows out of these institutions any other way, then you propose to starve them

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out. Now the gentleman wants to allow the Board of Supervisors to speculate upon the wants of these little ones, and divide them around, so that these hard-hearted persons may make something out of them, and bring them up without moral or religious training. There is no economy in it. There is no reason why the section as it comes from the Committee of the Whole should not be adopted. Allow me to say further to the gentleman from San Francisco, who gets up here and spits out his venom against religious institutions——

MR. REYNOLDS. I deny it.

MR. REDDY. I expected you would. Of course not every man charged is guilty, but we judge a man by his acts.

MR. REYNOLDS. It is easy to make such a charge, but I deny it.

MR. REDDY. I knew you would deny it when it was brought home to you in this shape. I expected you to deny it out of your own mouth. When you have nothing to say, sit down. That is a rule of Court. I am not surprised at all to see the gentleman differ with our Savior. I am not surprised to hear sneers coming from where they have against our religious institutions; not at all. I expected him to differ with the God that made him. The great groundwork of religion is charity, and those who cannot comprehend religion we may expect to hear them sneer.

THE PRESIDENT. The question is upon the amendment.

The ayes and noes were demanded by Messrs. Waters, Tinnin, Joyce, Reynolds, and Condon.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Kelley,	Smith, of Santa Clara,
Boggs,	Kleine,	Smith, of 4th District,
Boucher,	Laine,	Steele,
Burt,	Lampson,	Stevenson,
Caples,	Larkin,	Stuart,
Chapman,	Lavigne,	Sweasey,
Charles,	Lewis,	Swenson,
Cross,	Lindow,	Swing,
Crouch,	Mansfield,	Thompson,
Davis,	Martin, of Alameda,	Tinnin,
Dean,	Martin, of Santa Cruz,	Townsend,
Dunlap,	McCallum,	Turner,
Estee,	McComas,	Tuttle,
Estey,	McConnell,	Vacquerel,
Evey,	Nason,	Van Voorhies,
Filcher,	Neunaber,	Walker, of Tuolumne,
Freud,	Ohleyer,	Waters,
Glascock,	Reynolds,	Webster,
Hitchcock,	Rhodes,	Weller,
Howard, of Mariposa,	Schell,	West,
Hunter,	Schomp,	Wilson, of Tehama—64.
Inman,		

NOES.

Ayers,	Herrold,	Pulliam,
Barbour,	Hilborn,	Reddy,
Barry,	Howard, of Los Angeles,	Reed,
Beerstecher,	Hughey,	Shafter,
Bell,	Johnson,	Shurtleff,
Biggs,	Joyce,	Smith, of San Francisco,
Condon,	Kenny,	Soule,
Cowden,	Larue,	Stedman,
Dowling,	McFarland,	Tully,
Dudley, of Solano,	McNutt,	Van Dyke,
Farrell,	Moffat,	Wellin,
Garvey,	Morse,	Wickes,
Gorman,	Murphy,	White,
Grace,	Nelson,	Wyatt,
Gregg,	O'Donnell,	Mr. President—47.
Harrison,	O'Sullivan,	

MR. HITCHCOCK. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add to the end of the section, 'all orphans that are supported at the expense of the State, or receive State aid, shall be educated at the public schools.'"

MR. HITCHCOCK. I offer this in the interest of economy. If these children are cared for by the State they ought to be educated in the public schools of the State.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope that amendment will be adopted. We are told that the orphans are the wards of the State. If that is so they ought to be educated in the public schools of the State. The idea that these orphan asylums are sectarian schools is repudiated here. It is denied with great emphasis. If that be true, why then there can be no objection in the world to having them educated in the public schools. I am sure that no gentlemen can object to the State furnishing this tuition free of charge. They are not schools, they are orphan asylums. They are not church schools; they are not sectarian schools, not a bit of it; we deny it. They are asylums where these poor orphans are cared for and clothed and fed. How are these waifs and wards of the State going to be educated? They must not be allowed to grow up in ignorance. Certainly gentlemen do not mean that. Then we must provide for their education, and how else will you do it than by such an amendment as this?

MR. WATERS. I move the previous question.

Seconded by Messrs. Larkin, Van Voorhies, West, and Gregg.

THE PRESIDENT. The question is: Shall the main question be now put?

Lost.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I want to call attention to one or two things, and then allow the Convention to decide for themselves. In the first place these orphan asylums are all located at distant points. Even in San Francisco the orphan asylums are way out on the edge of the Mission, and there is no school house within two or three miles. Now, you propose to say that they shall go to the public schools, when there is no public school for them to go to. You will have to build a large building alongside for a school house. Is that in the interest of economy? I am surprised at the style of political economy offered by these wise gentlemen. They will go to the expense of building a school house alongside of every orphan asylum, and yet they say they are in favor of economy. Whoever heard of any such economy before? When you come to call upon the taxpayers for the funds to build these school houses you will find whether you are sustained or not. Gentlemen, you are carrying your opposition too far. You will not be sustained by the sentiment of the people.

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I am in favor of the amendment last offered, because it is just and proper, eminently proper. It is American, and it is in the interest of good government. I am in favor of it as a politician, because, by and by, when I come to run for office, I expect to catch a few American votes. They will be more numerous after awhile. So far as causing any expense, I suppose the Trustees or the School Superintendent can designate the teachers in the asylums, and things will go on as usual. If they are educated under the American system, by American teachers, there is no objection to donating money to their support; it is eminently right and proper, and I desire to have the roll called on the proposition.

MR. DUDLEY, of Solano. Mr. President: I am in favor of this amendment. There is no reason why teachers cannot be designated to teach in the asylums without incurring any increased expenses. Let them use the common school text books, and be taught by the common school system.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I give notice that I will offer the following amendment to the amendment: "If the parents or guardians so elect, and then without expense to the State." I think the parents and guardians should have something to say about this matter of education.

MR. HITCHCOCK. They do not have parents and guardians.

MR. HOWARD. I am speaking of the children of these asylums. They may have guardians even if their parents are dead. I do not see why the State should force a certain kind of education upon them. I see the last regulation in some of the English institutions is one by which the scholars, at certain hours of the day which do not interfere with their school duties, are to be given such religious instruction as the parents may designate. That system has proven entirely satisfactory, both to Protestants and Catholics. Religions may not be taught in the public schools, because men of all religions and no religions are taxed for their support; but this is no reason why, out of school hours, there might not be a system of religion taught in these institutions which would be agreeable to the parents and guardians; therefore it is that I think all the scholars of these institutions should not be compelled to go to the public schools. They ought to be allowed to be taught in the asylums as the parents and guardians may prefer, and without expense to the State. Any other system is the grossest tyranny.

MR. CAPLES. I understand if these children are thrown upon the State, the State becomes their guardian.

MR. HOWARD. No, sir; not absolutely. The State may assume the position, but the State is not the guardian. The guardian is one appointed by the Court. If they have neither legal guardian nor parent, then the Directors of the institution stand in the place of the guardian, and they will have a right to designate the system. I deny that it is the function of government to say, that a child shall be sent to a school where no religion is taught.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. President: I am opposed to the amendment offered by the gentleman from San Joaquin. I think I am in favor of the amendment of the gentleman from Los Angeles. I am opposed to the original motion, because I believe it is impracticable, and it certainly would add greatly to the expense of our common school system. Now, the first thing you would have to do would be to go to work and build school houses alongside of these orphan asylums. The Good Templars' Home for Orphans is about a mile and a half from any public school. I suppose public school teachers might be assigned rooms for their use. Now the State gives twenty-nine dollars to each child of proper age for its education, whether the parents are wealthy or not. Everybody receives it except the children of these orphan asylums. Now, if you put these children under the common school system, you add twenty-nine dollars to the expense of maintaining each of those orphans.

MR. DUDLEY, of Solano. They are enumerated now.

MR. HILBORN. My opinion is that they are not enumerated for school purposes.

MR. HITCHCOCK. Do you consider that it will injure the orphans to have them educated in the public schools.

MR. HILBORN. I wish every orphan in the State, if it were practicable, could be educated in the common schools. I was educated there myself, and have my children there, but I believe it is not practicable.

SPEECH OF MR. WEST.

MR. WEST. Mr. President: The charge has been made of those who have opposed giving State aid to private church institutions that propose to maintain orphans, that those persons were destitute of human feelings, and that they were opposed to the proper care of these little waifs;

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that they were in favor of throwing them out upon a cold and cruel world. That they were not in favor of taking care of them properly. Now, these charges I deny in toto. I suppose there is but one opinion in this Convention, so far as taking care of these children is concerned. The point of difference between gentlemen is the proper mode by which these waifs shall be taken care of. We are told by those who are in favor of caring for them in these institutions, that they are the wards of the State. If they are the wards of the State, where in the name of common sense should they be educated but in the public schools of the State. I hold that it is the paramount duty of this State to provide means to educate her children as Americans, imbue their minds with American doctrines and principles, and educate them under the common school system. Now, we do not claim the right to interfere with any one's religious belief. But we deny the right of these religious schools to come to the State and ask State aid to maintain their schools. The State has a right to educate its own wards, and stamp the spirit of American institutions upon the minds of its own children. Now, if gentlemen entertain such a love and devotion for the public school system they have a chance to manifest it right here by their votes.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: I am in favor of the section as it comes from the Committee of the Whole. I believe it is the best that can be done. It is the best scheme that can be devised by this Convention. It meets the views of a majority of the members of this Convention, and I am satisfied it will meet the views of a majority of the people of this State. At first I thought it would be better to build a State institution, but when I came to think the matter over and count the cost, I find that it would be impracticable. Now, we are making this appropriation to orphans, regardless of religious sect or denomination. They will all get an equal amount. I cannot see where this matter of sectarian teaching has crept into this discussion. I am sorry to see these matters brought up here. I am sorry to hear these appeals to the worst prejudices of the human nature. Now, why should we say to these people that they shall only teach certain kinds of religion. The Catholics do not tell you that in your institutions only the Catholic religion shall be taught. Everybody has a right to raise children in whatever faith they may think proper, and children have a right to be educated according to the wishes of parents or guardians. I am in favor of the public school system; but when you undertake with an iron hand, to cram it down the throats of the people, you are injuring your cause. It would be a load upon this Constitution, which it cannot possibly carry and live. Now, I think we had better go right back and adopt the section reported by the Committee of the Whole and stop.

REMARKS OF MR. MURPHY.

MR. MURPHY. Mr. President: It seems to me there is a great deal of ingenuity displayed by gentlemen on the other side. They propose amendment after amendment, which seem to strike at the very heart of the section as proposed by the Committee of the Whole. Now, sir, the framers of the old Constitution did not deem it necessary to interfere with this matter, and we have been working under that instrument for thirty years. Our public school system has been nourished. We have encouraged it by every Legislature that has ever convened. We have here, by the adopting of the article on education, pronounced emphatically in favor of the public school system. I refer these gentlemen to sections four, five, and six of that report, which are as follows:

"SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or may have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

"SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.

"SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools."

Now, this is really a question of the support of orphans, and ought to have nothing to do with schools at all. It is a question of the support and maintenance of a lot of little children who are not able to support themselves. This amendment could only emanate from one source, and that source the fertile brain of the gentleman from San Francisco, Mr. Reynolds. In fact I may state that he drew up this amendment. He reminds me of the schoolmaster that Goldsmith tells about:

"And still they gazed, and still the wonder grew,
That one small head could carry all he knew."

MR. LEWIS. Mr. President: It seems to me that the education of these orphans should be under the control of the State, inasmuch as the State supports them. I cannot for the life of me see where the tyranny comes in. I think there is a great deal more cry made about it than there is occasion for. I think we ought to adopt this amendment.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I am glad to see that the cat is out of the bag. Mr. Reynolds says there is sectarianism in the whole question, and I have no doubt he meant it. Now, sir, gentlemen come here on this floor and preach economy. We talk about education. But whenever we come to these institutions there is no more said about economy. We economize in the education of our children, but when it comes to these institutions, we have no more thought about economy. Now, we are told that it is the duty of the State to support these orphans. When we propose to support them in any other way except through certain institutions, we are met by the objection that we must not interfere. The State is expected to support them on the ground that they are the wards of the State, but when we talk about the State having something to say about the education of her children, we are told that the State has nothing to do with the matter. The State must pay, but the State must have no voice in the education of these children. I say that these children ought to be educated in the common schools in order to make thorough American citizens out of them, who will know the rights and duties of American citizens, and if they are educated in sectarian schools they will know everything else but their duties as citizens. [Applause.]

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope this matter will be allowed to go to a vote very soon. I am satisfied with this section as it is. There is nothing in the amendment proposed. If adopted it would accomplish nothing. As I understand it the common schools are open to these orphans as well as to all others. This whole matter is in the hands of the Legislature. The Legislature can make these appropriations or not, as they see fit; there is no compulsion about it. If these orphans are not being properly educated in these institutions, it is perfectly competent for the Legislature to make other provisions for them. I am perfectly satisfied with this section as it is.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. President: If this State had a compulsory school law, and every child in the State was compelled to attend school, I should vote for the amendment. Now, the original section reported by the committee, prohibited the granting of aid to these charities. But I found a strong tendency in this body to change that and grant them aid. It came to a vote and this provision was inserted. Now, if such an amendment as this is adopted it will certainly tend to break down religious charities. I believe in the public schools; I believe in compulsory education; I believe every child should be educated. But I cannot see why we should interfere with the religious belief of the parent or the child. I shall vote against the amendment. If the children were not being educated at all in these institutions, I would say, compel them to go to the public schools. I hope these amendments will be voted down. You are making a war that is entirely unnecessary.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: The gentleman from Del Norte referred to the article on education, to show that this body is sound on the public school question. Now, sir, the public school system of the State of California, as I understand it, is one which aims to reach every child in the commonwealth. We are all taxed alike to support it, and it is supposed to belong to all the children in the State. Now, sir, I wish to read a section from the article on education.

"SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State."

Now, we have made that declaration, and the vote here will show whether we mean it or not. I hope we do mean it, and I shall vote for the amendment. It is a just amendment, and one which will benefit, not alone the children, but the asylums; it will give them a general State character, as much as if they were supported exclusively by the State. It will bring them out from under sectarian influences, and that is one of the great aims of government. I shall oppose every proposition which proposes to mix up, in any way, the officers of this State with religious institutions. That is the reason I supported section twenty-two, because I thought it would cut some of the leaks so long complained of. The Committee of the Whole saw fit to open the door, to a certain extent, which we had closed. Now that these institutions are to receive State aid still, I want them brought under the control of the State as far as possible.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I regret that so much time has been spent on section twenty-two. I would not now speak upon this amendment, but I deem it necessary to state some of the reasons why I cannot vote in favor of the amendment. I do not desire to be placed upon record as voting against any amendment that contemplates the education of the youth of our land in the public schools. I am in favor of the common schools first, last, and all the time. But this amendment is most extraordinary. It is a good compulsory school law to be inserted in the Constitution of a very one-sided character. This Constitution does not say that all children are to be educated in the common schools of this State. It does not pretend to say that all children must go to the public schools. Now, compulsory school laws have existed for a number of years in Europe, and they never pretend to say that children must attend any particular school. They only provide that children between certain ages shall attend school. Some of the States in this country have adopted a similar pro-

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vision. They have provided that all children shall attend school three months every year in some, and six months in others. But no State in this Union has ever attempted to declare that they shall attend any particular school. Now, do gentlemen desire to say that all the children of this State shall even attend the public schools? Now, you are proposing to say that these waifs, these orphans and foundlings, shall attend a particular school and none other. I say it is unjust. Of course every sensible man knows that most of these institutions are under the control of one or the other of the churches. But it is not sectarianism because they are conducted by members of a church. It includes all the churches. Even the infidel, who does not believe in a God, may build an orphan asylum and reap the benefits of this provision. There can be no sectarianism in it, because it includes all churches and all sects. I am not afraid to have the youth of the land brought up under these religious influences, because when they grow old they will think for themselves and form their own conclusions.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Joaquin, Mr. Hitchcock.

The ayes and noes were demanded by Messrs. West, Reynolds, Lewis, Lampson, and Hitchcock.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Glascock,	Rhodes,
Blackmer,	Hitchcock,	Schell,
Boggs,	Holmes,	Schomp,
Boucher,	Howard, of Mariposa,	Steele,
Burt,	Kelley,	Stevenson,
Caples,	Keyes,	Stuart,
Chapman,	Kleine,	Sweasey,
Charles,	Laine,	Swing,
Crouch,	Lewis,	Thompson,
Davis,	Mansfield,	Turner,
Dean,	Martin, of Santa Cruz,	Tuttle,
Dudley, of Solano,	McCallum,	Vacquerel,
Estee,	McComas,	Van Voorhies,
Estey,	McConnell,	Webster,
Evey,	Nason,	West,
Filcher,	Ohleyer,	Wilson, of Tehama,
Freud,	Reynolds,	Mr. President—51.

NOES.

Ayers,	Howard, of Los Angeles,	O'Sullivan,
Barbour,	Hughey,	Pulliam,
Barry,	Hunter,	Reddy,
Beerstecher,	Inman,	Reed,
Bell,	Johnson,	Shafter,
Biggs,	Joyce,	Shurtleff,
Brown,	Kenny,	Smith, of Santa Clara,
Condon,	Lampson,	Smith, of San Francisco,
Cowden,	Larkin,	Soule,
Cross,	Larue,	Stedman,
Dowling,	Lavigne,	Swenson,
Dunlap,	Lindow,	Townsend,
Farrell,	Martin, of Alameda,	Tully,
Garvey,	McFarland,	Van Dyke,
Gorman,	McNutt,	Walker, of Tuolumne,
Grace,	Moffat,	Waters,
Gregg,	Morse,	Weller,
Harrison,	Murphy,	Wellin,
Heiskell,	Nelson,	Wickes,
Herold,	Neunaber,	White,
Hilborn,	O'Donnell,	Wyatt—63.

EXCUSED—Mr. Hall—1.

MR. REYNOLDS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add next after the word 'institutions,' in line thirteen, as follows: 'provided further, that such aid shall not be granted, nor shall any statute for such purpose be continued in force beyond the year A. D. eighteen hundred and eighty-six.'"

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Reynolds.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: It is hardly necessary for me to state my reasons for offering this amendment. It is not because I am opposed to the appropriation of any money from the State treasury to any institution whatever, which is not wholly under State control. I am opposed to it because there is no safety in it. Whenever you depart from the true course, then you are in danger. I am not offering this because I am opposed to any sectarian institution of any kind whatever. But, sir, it is because I believe, in truth and in fact, what gentlemen on the other side pretend to believe, that the orphans of the State are the wards of the State, and ought to be by the State supported and educated. I believe, in truth and in fact, cloak it as you will, design it as you may, that this means State support to sectarian institutions and sectarian schools, and gentlemen here know it very well. That is what the proposition is, pure and simple. It has been attempted time out of mind to choke down our throats the false declaration, that we wish to turn the poor orphan out into the streets, to be uncared for. It is untrue. We desire no such thing. [Confusion, noise, stamping of feet, and cries of question.] Go on with your Sandlot stamping, and Sandlot tactics. [Laughter.] If you have no more sense than to stamp in this hall, stamp away. If you have no respect for a legislative body, go ahead.

MR. REDDY. If you allude to me, I wish to say that I have not stamped, nor do I intend to.

MR. REYNOLDS. I did not allude to you.

MR. REDDY. You looked right straight at me.

MR. REYNOLDS. Now, sir, it is no doubt true that these institutions take very good care of the orphans. We are told that the State cannot take care of them because she is not prepared, and therefore the only thing to do is to aid these societies in caring for them. Now, we propose, by this amendment, to put an end to this in the near future, and to put it far enough off so that the State can make the necessary provisions. I believe that orphans ought to be provided for in the counties where they belong; that they ought to be raised in the neighborhood where they are born. The people there will take care of them, and bring them up, and they will get into the world at the age of majority in a condition and with an education and experience which will fit them to commence life's battles, much more so than those who are brought up in these institutions. It may be that the little girls will not wear the regulation apron. It may be that the little boys will not wear the regulation breeches, with the regulation stripe down the sides. It may be that they will not be taught quite so many regulation prayers. But, sir, they will learn something of the ways of the world. They will be among friends. They will be in the neighborhood where their parents resided, and there will be places found there for them, and they will not be turned out of these institutions in the great cities to go and hunt clerkships. They will be fitted for the active duties of life, because they have been brought up out of doors instead of in a hot house. There is no mistake about it, that the orphan that is raised in the community where it was born, stands a better chance in the world than if it was taken away and put in an asylum. I think this amendment is wise and just and ought to be adopted.

MR. ESTEE. Mr. President: I think we have debated this matter sufficiently, and I now call for the previous question.

Seconded by Messrs. Brown, Tully, Wyatt, and White.

THE PRESIDENT. The question is: Shall the main question be now put?

Lost.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I am opposed to the gentleman from San Francisco. I think we had better let eighteen hundred and eighty-six take care of itself. The men of that day will probably be as well qualified as we are to deal with this question. Now, sir, I am surprised at the temper exhibited here. I have always spoken in favor of the public schools. [Cries of question.] I have very little respect for the man who calls for question, while another is speaking. Now, the gentleman from Sacramento remarked, soto voce, that he did not want Democracy taught in the public schools. Neither do I, sir. And I do not want taught, what I know has been taught, the higher law. Sectarian doctrines have been taught in the public schools, and are yet in some localities. Those who have read the school books prepared by Mr. Swett, know that what I say is true. He taught over and over again the falsehood of his history that Jefferson Davis made his escape in woman's clothes. I am in favor of the public schools, and I want them conducted in a legitimate manner. Now, sir, the real question here is this, and it has been ignored all the time, and that is: Shall our churches be permitted to take care of these orphans for the State, assisted to some extent by the State? Is it economy to allow them to be taken care of in that way? I say it is. The churches furnish a large portion of the money, and it is much cheaper for the State than any other system that can be adopted.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Reynolds.

Lost.

MR. MCCONNELL. I offer an amendment.

THE SECRETARY read:

"Amend by adding the following at the end of section, 'provided, that no greater sum than sixty-five dollars shall ever be donated by the State to any one orphan or person per annum.'"

MR. MCCONNELL. Mr. President: I do not propose to occupy the time in making remarks. I merely call for the ayes and noes upon this amendment.

The ayes and noes were also demanded by Messrs. West, Evey, Huestis, and Stuart.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Howard, of Mariposa,	Shafter,
Blackmer,	Inman,	Smith, of 4th District,
Boggs,	Kelley,	Steele,
Boucher,	Keyes,	Stevenson,
Brown,	Kleine,	Stuart,
Burt,	Laine,	Sweasey,
Caples,	Lewis,	Thompson,
Crouch,	Mansfield,	Turner,
Davis,	McComas,	Tuttle,
Dudley, of Solano,	McConnell,	Vacquerel,
Estey,	Nason,	Van Voorhies,
Evey,	Ohleyer,	Webster,
Filcher,	Reynolds,	West,
Hall,	Rhodes,	Wilson, of Tehama,
Hitchcock,	Schell,	Mr. President—47.
Holmes,	Schomp,	

NOES.

Barbour,	Biggs,	Dean,
Barry,	Condon,	Dowling,
Beerstecher,	Cowden,	Dunlap,
Bell,	Cross,	Estee,

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Farrell,	Lampson,	Reed,
Freud,	Larkin,	Shurtleff,
Garvey,	Larue,	Smith, of Santa Clara,
Glascock,	Lavigne,	Smith, of San Francisco,
Gorman,	Lindow,	Soule,
Grace,	Martin, of Alameda,	Stedman,
Gregg,	Martin, of Santa Cruz,	Swenson,
Harrison,	McCallum,	Swing,
Heiskell,	McNutt,	Townsend,
Herold,	Moffat,	Tully,
Hilborn,	Morse,	Van Dyke,
Howard, of Los Angeles,	Murphy,	Walker, of Tuolumne,
Huestis,	Nelson,	Waters,
Hughey,	Neunaber,	Weller,
Hunter,	O'Donnell,	Wellin,
Johnson,	O'Sullivan,	Wickes,
Joyce,	Pulliam,	White,
Kenny,	Reddy,	Wyatt—66.

PAIRED—Mr. Tinnin, aye, with Mr. Casserly, no.

MR. SHAFTER. I offer an amendment.

THE SECRETARY read:

"After 'aged,' in line eleven, insert, 'or sick, or disabled.'"

MR. SHAFTER. Mr. President: Let us help the helpless. This amendment is confined to a class of persons who are not able to help themselves, and it ought to be adopted.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Marin, Mr. Shafter.

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

The ayes and noes were demanded by Messrs. West, Filcher, Keyes, Schomp, and Reynolds.

The roll was called, and the amendment concurred in by the following vote:

AYES.

Ayers,	Harrison,	O'Donnell,
Barbour,	Heiskell,	Ohleyer,
Barry,	Herold,	O'Sullivan,
Beerstecher,	Hilborn,	Pulliam,
Bell,	Howard, of Los Angeles,	Reddy,
Biggs,	Huestis,	Reed,
Blackmer,	Hughey,	Rhodes,
Boggs,	Hunter,	Ringgold,
Boucher,	Inman,	Schell,
Brown,	Johnson,	Shafter,
Burt,	Joyce,	Smith, of Santa Clara,
Chapman,	Kenny,	Smith, of 4th District,
Condon,	Keyes,	Smith, of San Francisco,
Cowden,	Lampson,	Soule,
Cross,	Larkin,	Stedman,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Dowling,	Lindow,	Thompson,
Dudley, of Solano,	Mansfield,	Townsend,
Dunlap,	Martin, of Alameda,	Tully,
Estee,	Martin, of Santa Cruz,	Turner,
Estey,	McCallum,	Tuttle,
Farrell,	McComas,	Van Dyke,
Freud,	McNutt,	Van Voorhies,
Garvey,	Moffat,	Walker, of Tuolumne,
Glascock,	Morse,	Waters,
Gorman,	Murphy,	Weller,
Grace,	Nason,	Wickes,
Gregg,	Nelson,	White,
Hall,	Neunaber,	Wyatt—90.

NOES.

Andrews,	Kleine,	Stevenson,
Caples,	Laine,	Sweasey,
Crouch,	Lewis,	Tinnin,
Evey,	McConnell,	Vacquerel,
Filcher,	Reynolds,	Webster,
Hitchcock,	Schomp,	West,
Holmes,	Shurtleff,	Wilson, of Tehama,
Howard, of Mariposa,	Steele,	Mr. President—25.
Kelley,		

MR. DUNLAP. I move we adjourn.

COMPENSATION OF MEMBERS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-three.

THE SECRETARY read:

"SEC. 23. The members of the Legislature shall receive for their services a compensation, per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars per day, and such mileage shall not exceed ten cents per mile. No increase in compensation or mileage shall take effect during the term for which the members of either House shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed."

MR. FILCHER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert the word 'six,' in place of the word 'eight,' in the third line."

MR. FILCHER. I simply submit this proposition, and call for the ayes and noes upon it.

The ayes and noes were also demanded by Messrs. West, Evey, Howard, Larkin, and White.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Placer, Mr. Filcher. The Secretary will call the roll.

The roll was called, and the amendment rejected by the following vote:

AYES.

Biggs,	Hitchcock,	Shurtleff,
Boucher,	Holmes,	Smith, of Santa Clara,
Burt,	Hunter,	Steele,
Chapman,	Johnson,	Thompson,
Crouch,	Kelley,	Turner,
Dean,	Laine,	Tuttle,
Dudley, of Solano,	Lewis,	Vacquerel,
Estee,	McComas,	Webster,
Evey,	McConnell,	Weller,
Filcher,	Nason,	West,
Freud,	Rhodes,	White,
Gorman,	Shafter,	Wilson, of Tehama—37.
Heiskell,		

NOES.

Andrews,	Howard, of Mariposa,	Reddy,
Ayers,	Huestis,	Reed,
Barbour,	Hughey,	Reynolds,
Barry,	Inman,	Ringgold,
Beerstecher,	Joyce,	Schell,
Bell,	Kenny,	Schomp,
Blackmer,	Keyes,	Smith, of 4th District,
Boggs,	Kleine,	Smith, of San Francisco,
Brown,	Lampson,	Soule,
Caples,	Larkin,	Stedman,
Condon,	Larue,	Stevenson,
Cowden,	Lavigne,	Sweasey,
Cross,	Lindow,	Swenson,
Davis,	Martin, of Alameda,	Swing,
Dowling,	Martin, of Santa Cruz,	Tinnin,
Dunlap,	McCallum,	Townsend,
Estey,	McNutt,	Tully,
Farrell,	Moffat,	Van Dyke,
Garvey,	Morse,	Van Voorhies,
Glascock,	Murphy,	Walker, of Tuolumne,
Gregg,	Nelson,	Waters,
Hall,	Neunaber,	Wellin,
Harrison,	O'Donnell,	Wickes,
Herold,	Ohleyer,	Wyatt,
Hilborn,	O'Sullivan,	Mr. President—77.
Howard, of Los Angeles,	Pulliam,	

MR. KENNY. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out 'eight,' in line three, and insert 'ten.'"

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Kenny.

The ayes and noes were demanded by Messrs. Kenny, Murphy, Joyce, West, and Huestis.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Murphy,	Swing,
Garvey,	O'Donnell,	Tully,
Gregg,	Reddy,	Walker, of Tuolumne,
Kenny,	Reynolds,	Waters—12.

NOES.

Ayers,	Hilborn,	Pulliam,
Barbour,	Hitchcock,	Reed,
Barry,	Holmes,	Rhodes,
Beerstecher,	Howard, of Los Angeles,	Ringgold,
Bell,	Howard, of Mariposa,	Schell,
Biggs,	Huestis,	Shomp,
Blackmer,	Hughey,	Shafter,
Boggs,	Hunter,	Shurtleff,
Boucher,	Inman,	Smith, of Santa Clara,
Brown,	Johnson,	Smith, of 4th District,
Burt,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Chapman,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Stevenson,
Cross,	Lampson,	Sweasey,
Crouch,	Larkin,	Thompson,
Davis,	Larue,	Tinnin,
Dean,	Lavigne,	Townsend,
Dowling,	Lewis,	Turner,
Dudley, of Solano,	Lindow,	Tuttle,
Estee,	Martin, of Alameda,	Vacquerel,
Estey,	Martin, of Santa Cruz,	Van Dyke,
Evey,	McCallum,	VanVoorhies,
Farrell,	McComas,	Webster,
Filcher,	McConnell,	Weller,
Freud,	Moffat,	Wellin,
Glascock,	Morse,	West,
Gorman,	Nason,	Wickes,
Hall,	Nelson,	White,
Harrison,	Neunaber,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wyatt,
Herold,	O'Sullivan,	Mr. President—99.

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MR. LARKIN. Mr. President: I move the previous question.
Seconded by Messrs. Wyatt, Howard of Los Angeles, West, and Evey.
THE PRESIDENT. The question is: Shall the main question be now put?
Lost.

ADJOURNMENT.

MR. MURPHY. I move we adjourn.
Carried.
And at five o'clock and fifteen minutes P. M., the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND THIRTY-FIRST DAY.

SACRAMENTO, Wednesday, February 5th, 1879.

The Convention met pursuant to adjournment at nine o'clock and thirty minutes A. M., President Hoge in the chair.
The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Fawcett,	Porter,
Barton,	Finney,	Prouty,
Berry,	Graves,	Rolfe,
Campbell,	Jones,	Shoemaker,
Dudley, of San Joaquin,	Noel,	Terry,
Eagon,	Overton,	Walker, of Marin.
Edgerton,		

THE JOURNAL.

MR. HUESTIS. I move that the reading of the Journal be dispensed with, and the same approved.
So ordered.

PETITIONS.

Messrs. Caples, Townsend, and Hall presented petitions, requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.
Laid on the table, to be considered with the article on revenue and taxation.

COMPENSATION OF MEMBERS OF THE LEGISLATURE.

THE PRESIDENT. Section twenty-three is before the Convention.
MR. WEBSTER. Mr. President: I offer an amendment.
THE SECRETARY read:
"Insert between the words 'mile' and 'no,' in line four, 'and for contingent expenses not exceeding twenty-five dollars for each session.'"
THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Alameda, Mr. Webster.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. President: The amount heretofore has varied from twenty-five dollars to one hundred dollars for each member, and it is certainly necessary to have some restriction in regard to that matter. I find that the Sergeant-at-Arms' expenses at the last session were about six hundred and forty dollars. Of course it is difficult to determine what the proper expense of that office is, therefore I have left that out. As far as members are concerned, I think twenty-five dollars is ample. That is more than has been drawn by the members of this Convention in a session of one hundred and thirty days, while the Legislature only sits sixty days.

REMARKS OF MR. MCCONNELL.

MR. MCCONNELL. Mr. President: I hope the amendment will be adopted. It will be remembered that the present salaries were fixed a quarter of a century ago, when the purchasing power of money was not half what it is to-day. Then masons got ten dollars a day. Now they get from three to five. Unskilled workmen got from three to five dollars a day. Now they get from one to two dollars. Unskilled workmen got from fifty dollars to one hundred dollars a month. Now they get from twenty dollars to thirty dollars. Board was then from twelve dollars to thirty dollars a week. Now it is five dollars. Every kind of produce has fallen. We should realize that the flush days of 'forty-nine are past. The sooner we realize that fact the better for us. Let us shape our actions accordingly. Now, Kentucky pays only three dollars a day——
THE PRESIDENT. The gentleman will confine himself to the question.
MR. MCCONNELL. I was simply going to show what other States pay. I find the average about three dollars and fifty cents, and that includes the great States of Illinois, Michigan, New York, Kansas, and Tennessee.
THE PRESIDENT. The question is on the amendment in relation to contingent expenses. The gentleman will confine himself to that.
MR. MCCONNELL. I understood it included both. I hope the amendment will be adopted. I think that amount is amply sufficient. If that is the ruling of the Chair I have nothing more to say upon the subject.
MR. VAN DYKE. Mr. President: I think the amendment is a very proper one. Twenty-five dollars to each member for a session of sixty days is plenty.
MR. BIGGS. I move to amend by inserting fifteen dollars.
THE PRESIDENT. Not in order. The question is upon the amendment.
Division was called for, and the amendment was adopted, by a vote of 73 ayes to 22 noes.
MR. HUESTIS. Mr. President: I offer an amendment.
THE SECRETARY read:
"Strike out the words 'per day,' at the end of the third line."
MR. HUESTIS. It is intended to avoid the tautology of the section.
THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Humboldt, Mr. Huestis.
Adopted.
MR. SMITH, of Santa Clara. Mr. President: I offer an amendment.
THE SECRETARY read:
"Strike out 'eight,' in the third line, and insert 'seven.'"
The ayes and noes were demanded by Messrs. White, Freud, Tuttle, Harrison, and Huestis.
The roll was called, and the amendment rejected by the following vote:

AYES.

Biggs,	Holmes,	Shafter,
Boucher,	Hunter,	Shurtleff,
Burt,	Johnson,	Smith, of Santa Clara,
Casserly,	Kelley,	Steele,
Crouch,	Kenny,	Swenson,
Dowling,	Laine,	Thompson,
Dudley, of Solano,	Lewis,	Townsend,
Estee,	Mansfield,	Turner,
Evey,	McComas,	Tuttle,
Filcher,	McConnell,	Vacquerel,
Freud,	Miller,	Webster,
Gorman,	Mills,	Weller,
Hager,	Moreland,	Wellin,
Harrison,	Nason,	West,
Heiskell,	Rhodes,	White—46.
Hitchcock,		

NOES.

Andrews,	Garvey,	Larkin,
Ayers,	Glascock,	Larue,
Barbour,	Grace,	Lavigne,
Barry,	Gregg,	Lindow,
Beerstecher,	Hall,	Martin, of Alameda,
Belcher,	Harvey,	Martin, of Santa Cruz,
Bell,	Herold,	McCallum,
Boggs,	Herrington,	McCoy,
Caples,	Howard, of Los Angeles,	McFarland,
Charles,	Howard, of Mariposa,	McNutt,
Cowden,	Huestis,	Moffat,
Cross,	Hughey,	Morse,
Davis,	Inman,	Nelson,
Dean,	Joyce,	Neunaber,
Doyle,	Keyes,	O'Donnell,
Estey,	Kleine,	Ohleyer,
Farrell,	Lampson,	O'Sullivan,

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Pulliam,	Stevenson,	Walker, of Tuolumne,
Reynolds,	Stuart,	Waters,
Ringgold,	Sweasey,	Wickes,
Schell,	Swing,	Wilson, of Tehama,
Schomp,	Tinnin,	Wilson, of 1st District,
Smith, of 4th District,	Tully,	Winans,
Smith, of San Francisco,	Van Dyke,	Wyatt,
Soule,	Van Voorhies,	Mr. President—76.
Stedman,		

MR. LAINE. Mr. President: I desire to call attention to a mistake in the Journal. I find an amendment credited to me that ought to be credited to Mr. Larue.

THE PRESIDENT. The mistake will be corrected. The question is on concurring with the amendment of the Committee of the Whole to section twenty-three, as amended.

Concurred in.

TITLES TO BILLS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-four.

THE SECRETARY read:

"SEC. 24. Every Act shall embrace but one subject, and matter properly connected therewith, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be reënacted, and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language."

MR. AYERS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after the word 'proceedings,' in line eight, 'excepting in the Courts of Justices of the Peace.'"

MR. AYERS. Mr. President: The object of this amendment is to permit Justices' Courts, in some of the townships in the southern portion of this State, where the population is almost entirely composed of native Californians, to preserve their proceedings in the Spanish language. It will enable those Justices where the parties are all Spanish to have the proceedings conducted in that language. It can do no possible harm, and generally they will be conducted in the English language.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Los Angeles, Mr. Ayers.

Lost.

MR. DUDLEY, of Solano. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'only as to so much thereof as shall not be expressed in the title.'"

MR. DUDLEY, of Solano. I believe the whole Act ought to be void if any person attempts to cover up anything that is not expressed.

MR. LAINE. I hope the amendment will prevail. It will stop this logrolling.

MR. SCHELL. Is an amendment to the amendment in order?

THE PRESIDENT. No, sir. The question is upon the adoption of the amendment.

Lost—ayes 23.

MR. BARBOUR. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'and matter properly connected therewith.'"

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: This subject was debated in Committee of the Whole, but perhaps the question is not fully understood. I have examined these other Constitutions and find they do not contain these words. I believe the language is wrong, and should not be in there. Of course it is understood that this section is aimed at the practice of smuggling and logrolling bills through. Now, the Convention will notice in other Constitutions, where this language is made use of, will find that they do not vitiate the whole bill. So much of the bill as is expressed in the title can be retained, and the other rendered void. That is sufficient protection without the insertion of these words. It opens the door to fraud and misconstruction, as to what is matter properly connected therewith. After you assert a principle, then you open the door to construe that principle away.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. I think this language—"and matter properly connected therewith"—ought to remain in the section. If it is stricken out it will produce a great deal of trouble and uncertainty. It is very hard for a jurist of the most profound character even, to undertake to say how the whole subject of an Act shall be put into the title. It is an exceedingly difficult matter, and the question will constantly rise as to what Acts of the Legislature might be declared unconstitutional. Important Acts relating to public matters might be declared unconstitutional simply because of some technical defect in the title. Now what can be the objection to having these words in here? Why not have matter properly connected therewith in the bill? They belong there. In a former debate, reference was made to the provision of a bill for building a bridge across a stream. Now why not provide for keeping the river clean above and below the dam? And there are many questions of that kind where nice questions may arise. The object of this whole provision is merely this, that you shall not get up a false title which will deceive the members of the Legislature at the time of the passage of the Act; that they shall not be deluded by the title; that it shall not speak of one subject matter in the title and treat of another in the Act. That is the whole object of the provision. Now if you confine it to the subject, and matter properly connected therewith, that will be sufficient to guard against all abuses. I think it is fair and just, and I know it will avoid a great deal of legislation and trouble. The reason why the Supreme Court held that this clause in the old Constitution was directory and not mandatory, was that more than three fourths of the Acts of the Legislature of the State would have been unconstitutional. It became a matter of necessity to hold that it was merely directory. The statute book would have been torn all to pieces. I think this provision ought to stand just as it is.

MR. CASSERLY. Mr. President: There is another very strong practical reason in favor of the position assumed by the gentleman from San Francisco, Mr. Wilson, and that is that the Act is always passed first, and then the title is acted upon, and very often amended. Gentlemen can see upon a moment's reflection how easily an error might be made in adopting the title.

MR. SHAFTER. Mr. President: I am in favor of striking that out, and also the next clause of the section. I agree with the gentleman who just spoke. The last question is: Shall the title stand as the title of the bill? The bill has been amended, and passed absolutely. Perhaps the bill has been increased, and the last question is on the approval of the title. The object of putting the true object of the bill into the title is to prevent the danger of passing a bill without understanding what it is. The title, therefore, being the last thing fixed, furnishes no indication of the character of the bill. The title may be one thing and the bill another. After the bill is passed there is very little attention paid to the title. In the first place, the evil which existed under the old system, which this provision aims at, does not exist to such an extent now, because every bill must be read in full, and printed with all the amendments.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Barbour.

Adopted.

MR. SCHELL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words after 'title,' in line two, up to and including 'title,' in line five."

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I am satisfied that these words ought to be stricken out. I believe it is apparent to every one that it is impossible to express the actual objects of a bill in its title. It never has been done, and I do not believe it ever can be done. There would be a very embarrassing question to determine, and that is, whether Acts of the Legislature are constitutional or not. That question would be constantly coming up, and there is no possible good to be accomplished by it.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I desire to call attention to one feature of this section that ought to go out. Suppose a bill is pending, and some man is disposed to get through something that is bad. He succeeds in tacking that on to the bill. And when the bill is passed, he succeeds in getting the title amended so as to include only the bad part. The result will be that the good part of the bill will be declared void, while the bad part will remain valid.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: The provision now sought to be stricken out is a provision that is found in most all of the recent Constitutions, and it seems to me it is necessary here, if we intend to make this Constitution consistent. In the first place, this section says every Act shall embrace but one subject, and matter properly connected therewith, which shall be expressed in the title. Do we mean anything by that? I say that there is an expression of public policy elsewhere that ought to find expression here. It is a policy which prevents the insertion in bills of matter foreign thereto. Let us adopt the section as it stands, and say that any Act of the Legislature which is contrary to the spirit of this section shall be null and void.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I had prepared an amendment before this amendment was offered, to reinsert the provision of the present Constitution, but I find that the amendment of Mr. Schell substantially reinserts it. I am satisfied, so far as the question of title is concerned, that the argument is all in favor of the amendment proposed, so as not to give so much consequence to the title, because that is the last thing done in the passage of the Act. But there are other words here that we ought to strike out. If we do not strike them out we will reach some evils that are not dreamed of now, and that is where it says that the Act shall be void only as to so much thereof as is not expressed in the title. That is to say, the Act must stand, except as to that part not expressed in the title, thereby changing the rule of the Courts in the construction of statutes, because the rule is, that if any portion of an Act is unconstitutional, and the rest of the Act can stand disconnected, it shall stand; if not, then the whole Act falls.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: Whenever a bill passes the Legislature the first question will be: what part of it is expressed in the title, and what is not expressed? There would be a question that would have to be determined. What part of the law is void and what part is valid. One Court decides one way and another Court decides another way. And when it goes to the Supreme Court they will decide one way, and when a new Court comes on the bench they may decide another way. I

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am opposed to it. It is not in Constitutions, as a general thing, and wherever it has been placed in Constitutions it is an exception to the general rule. I would prefer the Constitution as it was. It is dangerous to make this change.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Stanislaus, Mr. Schell.

Division was called for, and the amendment rejected by a vote of 37 ayes to 51 noes.

MR. MCCALLUM. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the word 'all,' in line seven, and insert: 'Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in the title, and no law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be reënacted, and published at length as revised or amended.'"

MR. MCCALLUM. Mr. President: I merely call the attention of the Convention to the fact that this is substantially the Constitution as it is, and section twenty-four, as reported by the Legislative Committee. If this amendment should be adopted the Constitution will remain precisely as it is now upon this subject, upon which there has been so much litigation. I propose to leave it precisely as it is in the present Constitution. I think it is the only safe thing to do.

MR. TINNIN. I think this amendment is a very proper one. It is precisely the old Constitution, upon which the Courts have passed, and there will be no trouble.

MR. MCFARLAND. Mr. President: I desire to restate my objection, made in Committee of the Whole, to the clause providing that the title shall specify the objects of the bill. I undertake to say that it will give rise to more litigation than any other clause in the Constitution. Under the old Constitution the Supreme Court could never get along without declaring that this provision was simply directory. Now, we have a provision that this Constitution shall be prohibitory and mandatory; and then, if we insert this clause, half the laws in the books will be unconstitutional. I am opposed to the whole thing, and I hope it will all be stricken out. It will give rise to litigation upon every bill that passes the Legislature.

MR. VAN DYKE. The difficulty lies in the adoption of the amendment striking out the words, "and matter properly connected therewith;" and I intend at the proper time to give notice of a motion to reconsider the vote by which that amendment was adopted. I think it was one of the most necessary clauses in the whole section.

MR. LAINE. I think it would not be a bad thing if a large part of the laws were declared unconstitutional. I hope the amendment will be adopted. This is to prevent things being smuggled into a bill which are not expressed in the title. It would work no injury should the Supreme Court declare all such laws unconstitutional.

MR. SCHELL. I shall vote for the amendment because it restores the language of the old Constitution.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: I would be in favor of the old Constitution were it not for the fact that we have already adopted a provision declaring that the provisions of this Constitution are mandatory. Such a provision, if it is inserted in this Constitution will be mandatory. It seems to me that the words that were stricken out were improperly stricken out. We need it all here. We must have it, or else change what we have here. To say that it is mandatory, that every Act shall embrace but one subject, and that to be expressed in the title, is to say, that many of the Acts passed by the Legislature will be unconstitutional. And even if not so held, in the end, there will be litigation over every Act, whether it be unconstitutional or not. I am opposed to making any such mandatory provision. It would be better to leave it as it has been. It oftentimes happens that a large proportion of legislators, and especially those of the lower House, are men who are not skilled in the drafting of laws. There ought to be no such serious difficulty thrown in their way.

MR. ANDREWS. I hope the amendment will be adopted. It will be a guard against hasty and improper legislation.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Alameda, Mr. McCallum.

The ayes and noes were demanded by Messrs. McCallum, Freeman, Schell, Keyes, and Sweasey.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Harvey,	Mills,
Barbour,	Herold,	Moreland,
Beerstecher,	Herrington,	Neunaber,
Bell,	Holmes,	O'Donnell,
Brown,	Howard, of Los Angeles,	Ringgold,
Condon,	Huestis,	Schell,
Cross,	Joyce,	Smith, of Santa Clara,
Doyle,	Kenny,	Smith, of San Francisco,
Dudley, of Solano,	Keyes,	Stevenson,
Estey,	Laine,	Sweasey,
Farrell,	Lampson,	Swenson,
Filcher,	Larue,	Swing,
Freud,	Lavigne,	Tinnin,
Garvey,	Lewis,	Tuttle,
Glascock,	Lindow,	Vacquerel,
Gorman,	Mansfield,	Wickes,
Grace,	McCallum,	Winans,
Hager,	McComas,	Wyatt—56.
Harrison,	Miller,	

NOES.

Barry,	Hitchcock,	Shafter,
Belcher,	Howard, of Mariposa,	Shurtleff,
Biggs,	Hughey,	Smith, of 4th District,
Boggs,	Hunter,	Soule,
Boucher,	Inman,	Stedman,
Burt,	Johnson,	Steele,
Caples,	Larkin,	Thompson,
Casserly,	Martin, of Alameda,	Townsend,
Charles,	McConnell,	Tully,
Crouch,	McCoy,	Van Dyke,
Davis,	McFarland,	Van Voorhies,
Dean,	McNutt,	Walker, of Tuolumne,
Dowling,	Morse,	Waters,
Estee,	Murphy,	Webster,
Evey,	Nason,	Weller,
Freeman,	Ohleyer,	West,
Hall,	Pulliam,	White,
Heiskell,	Reynolds,	Wilson, of 1st District,
Hilborn,	Rhodes,	Mr. President—57.

EXCUSED—Mr. Ayers—1.

THE PRESIDENT. The question is upon the concurring with the amendment of the Committee of the Whole.

Carried.

NOTICE OF RECONSIDERATION.

MR. VAN DYKE. Mr. President: I give notice that I will, on to-morrow, move to reconsider the vote by which the amendment striking out, in section twenty-four, legislative department, the words, "and matter properly connected therewith," was adopted.

SPECIAL LEGISLATION.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-five.

THE SECRETARY read:

"SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

"First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

"Second—For the punishment of crimes and misdemeanors.

"Third—Regulating the practice of Courts of justice.

"Fourth—Providing for changing the venue in civil or criminal cases.

"Fifth—Granting divorces.

"Sixth—Changing the names of persons or places.

"Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

"Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

"Ninth—Regulating county and township business, or the election of county and township officers.

"Tenth—For the assessment or collection of taxes.

"Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

"Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

"Thirteenth—Extending the time for the collection of taxes.

"Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

"Fifteenth—Refunding money paid into the State Treasury.

"Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

"Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

"Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

"Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

"Twentieth—Exempting property from taxation.

"Twenty-first—Changing county seats.

"Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

"Twenty-third—Regulating the rate of interest on money.

"Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

"Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

"Twenty-sixth—Remitting fines, penalties, or forfeitures.

"Twenty-seventh—Providing for the management of common schools.

"Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

"Twenty-ninth—Affecting the fees or salary of any officer.

"Thirtieth—Changing the law of descent or succession.

"Thirty-first—Authorizing the adoption or legitimation of children.

"Thirty-second—For limitation of civil or criminal actions.

"Thirty-third—In all other cases where a general law can be made applicable."

MR. SCHELL. Mr. President: I offer the following amendment:

THE SECRETARY read:

"Amend subdivision twenty-one, section twenty-five, by inserting before the word 'changing,' the words 'locating or,' so as to read: 'Twenty-first—Locating or changing county seats.'"

MR. SCHELL. Mr. President: I think there ought to be a prohibition against locating as well as changing county seats. The Legislature

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ought not to locate county seats. That matter ought to be left to the people themselves.

MR. HEISKELL. That provision does not provide that the Legislature shall fix county seats, but merely that they shall pass general laws for that purpose.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Stanislaus, Mr. Schell.

Lost.

MR. BEERSTECHER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add to subdivision eight, of section twenty-five, the following, 'except in cities of over thirty thousand inhabitants.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Subdivision eight provides that the Legislature shall pass no law for summoning and impaneling grand and petit juries, and providing for their compensation. I propose to add an exception which will cover San Francisco. Under the old system, the general system that prevailed throughout the State, it was impossible to get proper juries in the city of San Francisco, and they never did have until the Legislature passed a special law making special provision for that city. When the Supervisors had the control of summoning juries, the result was that they were composed of the most worthless instead of the best men; men who hung around for no other purpose than to get the per diem. It was almost impossible to get business men, educated men, and men of integrity upon juries. The Legislature was brought to see the difficulty, and they changed the law so that the juries in that city are summoned in a different way.

MR. VAN DYKE. Mr. President: I don't see any necessity for such an amendment. The Legislature can, by a general law, provide different modes of summoning jurors for different cities, according to population. There is no necessity for making this exception at all.

MR. BEERSTECHER. I brought this matter up at the solicitation of Judge Campbell, who was solicited by members of the bar.

MR. VAN DYKE. I understand that; nevertheless it is unnecessary. I cannot see why it would not be proper for the Legislature to pass a general law applicable to cities having thirty thousand inhabitants and over. That would answer the purpose just as well as to have the exception here.

MR. HAGER. Mr. President: I do not think the amendment is necessary at all, and if my associate will think of it, he will come to the same conclusion. We legislate, by general laws, for all the counties in the State; we also legislate, by general law, for all the cities in the State, and a provision may be made for San Francisco, by general law for consolidated city and county governments; so I think the amendment is unnecessary.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Beerstecher.

Lost.

MR. LAINE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend seventh subdivision, of section twenty-five, by striking out the words 'roads, highways,' in line eleven."

MR. LAINE. Mr. President: I wish to say that I think it is impossible to adopt a general road law for this State. It has been tried over and over again. It was tried in the codes. We found it practically impossible, for the reason that counties are so differently situated. They are operating local road laws. We have had a great deal of difficulty in our county, and we have a good system of road laws.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Santa Clara, Mr. Laine.

Lost.

MR. LAINE. Mr. President: I move to strike out subdivision twenty-eight. I make this motion because I am satisfied it will not work.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: It seems to me that section ought to be stricken out. In some counties the Auditor and Recorder are combined; in some counties the Treasurer is made Collector; in others the Sheriff is made Tax Collector; in some counties the County Clerk is Clerk of the Board of Supervisors, as well as of the Court. Now, in Sacramento, you might want the Sheriff to perform no other duties, while in the adjoining county he might as well collect the taxes also. There should be power in the Legislature to arrange these matters; to impose other duties where they can be imposed, and combine two or more offices, where it can be done as well as not. If this is adopted, they will have no such powers. The section ought to be stricken out.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I hope this part of the section will not be stricken out. I consider it one of the reforms necessary to be inserted here. It does appear to me that gentlemen have forgotten the article on city, county, and township organization, in which we provide for all these things. The counties in this respect can be classified by general law. A certain provision can be made to apply to a certain class of counties. There is no trouble about it in the world. Such a law would be uniform in its operation. There is no necessity for striking this out.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: I am satisfied that this clause is too radical and too sweeping. In our crusade against the legislative power we have gone too far. We are inaugurating a system that is entirely new, and although some of these clauses are copied from the Constitution of Pennsylvania, yet I contend that they are so recent that we have no satisfactory knowledge of their workings. There the Legislature has been so entirely shorn of all its power, that it is almost a useless organization—a defunct branch of the government. While it is desirable that we should adopt some system to prevent these abuses, we should leave something under its control. It is time we should pause and reflect upon what we are doing, in making each county to establish its own government. We are going too far. I think this proposition is wrong and vicious, and should not be accepted.

MR. WHITE. Mr. President: I trust there will be no going back upon this system to cut off special legislation. There is nothing in the whole State that is more demanded than that. There is no difficulty about this; none at all. Uniform laws can be made for all the counties, according to their needs. It has worked well in other States, and it will in this.

MR. LARKIN. Mr. President: I don't propose to speak upon this. There is no occasion for striking this out.

MR. WYATT. Mr. President: I hope the motion to strike out will not prevail.

THE PRESIDENT. The question is upon the motion to strike out.

Division was called, and the motion lost, by a vote of 44 ayes to 55 noes.

MR. REYNOLDS. Mr. President: I offer an amendment.

THE SECRETARY read:

"In line forty-six, of section twenty-five, subdivision twenty-eight, add the following at the end of the paragraph: 'or directing the payment of money from out of the treasury, or by any officer of, or creating any liability against a county, city, town, or any public or municipal corporation, without its consent.'"

MR. REYNOLDS. Mr. President: This is an amendment that was reported by the Committee on City, County, and Township Organization, and it is a very necessary amendment. It was regarded as a necessary amendment by that committee, but when the section was under consideration a motion was made to strike it out, and it went by the board. I now move to insert it here, as it is a very proper prohibition.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Reynolds.

Lost.

MR. McFARLAND. Mr. President: I move to strike out the thirty-third subdivision.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. President: We have already provided thirty-three instances where special laws shall not be passed. Now, this last clause says that there shall be no special legislation where a general law can be made applicable. It must be apparent that there is no necessity for that clause, and if there is, any one must see that it will give rise to an immense amount of litigation. Whenever a law is passed by the Legislature, somebody will take it to the Supreme Court to see whether it is special or general. It is entirely unnecessary and mischievous. We do not want to provide for any more constitutional law questions than is absolutely necessary. The Courts will have enough to do anyway.

MR. VAN DYKE. Mr. President: I agree with the gentleman, that this is a vicious amendment, and I can see no good purpose that it can subserve. It will always raise the question in the Courts whether a law could not have been made general. I think it ought to be stricken out.

MR. LARKIN. Mr. President: It is rather remarkable that these distinguished lawyers should raise an objection to this section, that it will tend to encourage their business. That section is the most important section of this whole provision. It is the true principle of government, that whenever a general law can be made applicable, a special law shall not be passed.

MR. McCALLUM. Mr. President: The Legislative Committee went through all the Constitutions, and from those Constitutions they have specified thirty-two different cases in which there shall not be special legislation, and then we adopted a general clause to cover everything which might not have occurred to the committee. It was proposed, at first, that the Legislature should not pass special laws in any case, but that would not bear discussion. That was too radical, so we adopted this section.

MR. SCHELL. Mr. President: I think this clause ought to be amended to read like this: "All other cases which the Committee on Legislative Department may have forgotten." I would vote for that amendment; but, as I do not expect to have a chance to offer it, I shall vote to strike out this clause.

MR. BARBOUR. Mr. President: I suppose gentlemen hardly understand the effect of striking this out. It would authorize special legislation in all other cases except these mentioned. That is the effect of it. The Court would be bound to construe it that the expression of one thing is the exclusion of all others.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: It seems to me this might be stricken out. We have proceeded here, in thirty-two subdivisions, to limit the power of the Legislature. In doing this we have not only availed ourselves of our own experience, but the experience of other States, in selecting subjects upon which we have prohibited special or local legislation. It seems to me that clause is objectionable upon the ground suggested by the gentleman from Alameda, Mr. Van Dyke, that it will be the cause of litigation as to what is and what is not special legislation. We have covered all the cases that our own experience, and the experience of other States can suggest, and it seems to me we might as well strike it out.

THE PRESIDENT. The question is on the motion to strike out.

Division was called, and the motion was lost by a vote of 42 ayes to 56 noes.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Carried.

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THE PRESIDENT. The question is upon concurring with the Committee of the Whole in striking out section twenty-eight. The Secretary will read the section.

THE SECRETARY read:

"SEC. 28. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation, and no person shall be selected who is an officer or stockholder in any corporation."

Concurred in.

THE SECRETARY read section twenty-nine, stricken out by the Committee of the Whole.

"SEC. 29. Dues from corporations shall be secured by such individual liabilities of the corporators and other means as may be prescribed by law. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and the franchises of such corporations shall be assessed at their actual cash value, and taxed accordingly."

Concurred in.

THE SECRETARY read section thirty, which was stricken out by the Committee of the Whole.

"SEC. 30. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all Courts, in like cases as natural persons."

Concurred in.

THE SECRETARY read section thirty-one, which was stricken out by the Committee of the Whole.

"SEC. 31. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank to circulate as money."

Concurred in.

THE SECRETARY read section thirty-two, which was stricken out by the Committee of the Whole.

"SEC. 32. The Legislature of this State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking or creating paper to circulate as money."

Concurred in.

THE SECRETARY read section thirty-three, which was stricken out by the Committee of the Whole.

"SEC. 33. Each stockholder of a corporation or joint-stock association shall be individually and personally liable for his proportion of all its debts and liabilities contracted or incurred while he was a stockholder, and the trustees or director of such corporation or association, and each of them, shall be responsible, individually, for the misappropriation by the officers thereof of the funds or deposits of such corporation or association."

Concurred in.

THE SECRETARY read section thirty-four, which was stricken out by the Committee of the Whole.

"SEC. 34. It shall be the duty of the Legislature to provide, by general laws, for the organization of city, town, and county governments, and for assessing and collecting taxes for the support of the same; provided, that no city, city and county, town, or county shall ever incur a debt which, together with existing indebtedness, shall exceed two per cent. of the assessed value of the property therein. Such value shall be ascertained from the assessment roll for State and county purposes made immediately previous to incurring such indebtedness; provided, however, that a city, city and county, town, or county may borrow money under and in accordance with the following conditions and limitations in addition to any other conditions and limitations contained in the Constitution, namely: The debt must be for some single work or object only, and must be authorized by a resolution passed by a vote of three fourths of all the members elected to the Board of Supervisors, Common Council, or local Legislature. Such resolution shall also distinctly specify the single work or object for which the debt is to be created, and the amount of the debt authorized, and shall contain provisions for a sinking fund to meet the same at maturity, and requiring at least ten per cent. of the principal to be annually raised by taxation and paid into the sinking fund. Such resolution shall not take effect until it shall be ratified at an election held in said city, city and county, county, or town, at which no other matter is voted upon, and which shall be held within thirty days after the passage of said order or resolution. The Legislature shall make such laws as may be necessary to provide for holding such election and ascertaining the result thereof."

Concurred in.

THE SECRETARY read section forty, which was stricken out by the Committee of the Whole.

"SEC. 40. The Legislature shall not ratify any amendment to the Constitution of the United States which may be proposed by Congress, except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment."

Concurred in.

THE SECRETARY read section forty-one, which was stricken out by the Committee of the Whole.

"SEC. 41. In case of a contested election in either branch of the Legislature, only the claimant decided entitled to the seat shall receive from the State per diem compensation, or mileage."

Concurred in.

THE SECRETARY read section forty-two, which was stricken out by the Committee of the Whole.

"SEC. 42. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in this Constitution."

Concurred in.

REGULATING CHARGES OF CORPORATIONS.

THE PRESIDENT. The question is upon the new section reported by the Committee of the Whole.

THE SECRETARY read:

"SECTION —. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph, gas, and water corporations, and the charges by corporations or individuals for storage, wharfage, and water, in which there is a public use, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation."

Concurred in.

LEGISLATIVE AID.

MR. BEERSTECHER. Mr. President: I offer an amendment to section thirty-seven.

THE SECRETARY read:

"Add to section — 'provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: Section thirty-seven reads as follows:

"SEC. 37. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever."

We want this amendment in order to avoid the possibility of a construction by the Supreme Court, that these sections may conflict with each other. I don't want to take any chances. If we propose to do a thing let us do it thoroughly or not do it at all.

MR. LARKIN. That does not cover the whole question.

MR. BEERSTECHER. I have read the matter over, probably, more times than the gentleman has. There may be a chance that the Supreme Court may decide adversely to section twenty-two and in favor of section thirty-seven. There is a possibility of doubt arising in the matter, and in order that there may not be any doubt I offer this amendment. It confers no additional power. I consider it necessary, and it has been considered necessary by a number of gentlemen versed in the law.

MR. WATERS. Mr. President: I am in favor of this amendment, because I think it is no more than right. The majority of this Convention have expressed themselves in favor of the Legislature having this power. Now, I propose to make it effective as far as my vote is concerned. I think there has been sufficient discussion upon this point, and I now move the previous question.

Seconded by Messrs. Evey, West, Huestis, and Estee.

THE PRESIDENT. The question is: Shall the main question be now put?

Lost.

MR. REYNOLDS. Mr. President: I don't see any need in the world for this amendment. We have not authorized by section twenty-two, the Legislature to appropriate money to any religious creed, or church, or sectarian purpose, and I am astonished that the gentleman should assume that we have by offering such an amendment as this. [Laughter.]

MR. FILCHER. Mr. President: I hope this amendment will not pass. It looks to me like a trick. Section twenty-two provides, that notwithstanding anything contained in that or any other section, the Legislature shall have such power. This is only buncombe, and it is in bad taste to make buncombe here. It is discreditable to the intelligence of this body to reassert such a plain assertion.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. President: As I understand it, section twenty-two, as it now stands, is the deliberate judgment of this Convention. They have adopted it. Now, if section thirty-seven is in conflict with it, it ought to be made consistent with it. It ought to be altered so as to be made to conform to section twenty-two. It will do no harm to insert this amendment. My own judgment as a lawyer is, that section twenty-two and section thirty-seven, as they now stand, are in conflict with each other, and it would require a very close construction by the Courts, and some torture and Judge-made law, to get out of section thirty-seven any authority to make these appropriations. The Court may very well say, that while section twenty-two allows aid to be granted to private institutions which are supporting and maintaining orphans, section thirty-seven prohibits the granting of aid to any such institutions which are under the control of any church or sectarian denomination. This would exclude the Hebrew Orphan Asylum, the Protestant Orphan asylums, and the Catholic asylums, because they happen to be under the control of churches. Therefore, the only orphan

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asylums that could receive aid would be those under the control of irreligious people and infidels. If they are under the control of the church they would be cut off.

MR. LAINE. Didn't you draft that amendment to section twenty-two?

MR. WILSON. Yes, sir.

MR. LAINE. Why did you put that proviso in, "notwithstanding anything contained in this or any other section?"

MR. WILSON. Because I saw a determination on the part of some gentlemen to cut off these children, and to pursue each section of this article to the end, with the same hostility. That is the reason. There have been three distinct assaults made. Therefore I prefer, as far as I am concerned, to repel them with three distinct matters of defense. It will cut these asylums off, because it is well known that all of them, or nearly all, are under the management of some religious sect.

MR. FILCHER. Section twenty-two says: notwithstanding anything contained in section thirty-seven——

MR. WILSON. No man who is a friend to these institutions, and really wants to see them aided by the State, will object to this amendment.

MR. STUART. I ask the gentleman if this will not open the treasury for others?

MR. WILSON. Not at all, sir. It does not extend any further than section twenty-two. That is the extent of the amendment. I am just as much opposed as any gentleman upon this floor to any union of church and State. But I do not look upon this as State aid to a church. It is for the orphans. It is aid granted to these unfortunate children. And because they happen to be under the care of good, pious people, I do not see that it is any reason why they should be cut off. These children cannot control their own destinies. Every child is born under some religious faith—Catholic, Protestant, or Hebrew. They cannot help being orphans; they cannot help themselves. Why should they be cut off and disowned by the State, because they happen to be in charge of good, pious people, who are devoting their lives in caring for the poor and lowly. Gentlemen who are in favor of granting this aid should vote for this amendment.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I am not a very religious man, sir, not generally considered so, but I have some heart left, perhaps as much as some who make loud professions. I am not inclined, because a man is a Hebrew, or a Catholic, or anything else, to content myself with passing by on the other side when I see him lying by the wayside. The Good Book says, "Inasmuch as ye have done it unto the least of these, ye have done it unto me." Now, sir, I think it quite necessary that this section should conform precisely to the one we have adopted. Section twenty-two does not contain any such language as was attributed to it by the gentleman from Placer, Mr. Filcher. There is no such language contained in it; at least there is not in my copy. Now, sir, this money is given and paid over to these institutions, not for the support of schools or churches, but for a certain given purpose. But it is given to the institutions, and notwithstanding the purpose for which it is given, would be forbidden by this section if it is allowed to stand without amendment, because it is in direct conflict with section twenty-two, therefore this amendment must be made. In regard to the merits of this question I say it is far cheaper and much better to have these orphans taken care of in this way than it would be to have them all in one institution, under the charge of State officers. I believe that moral training is as necessary to a child, in order to make a good citizen out of him, as food and clothes, I care not what creed they belong to. I pay some taxes myself, and I pay no money into the State treasury with more alacrity than I do the money for this purpose. Of all the money I pay towards the support of the various departments of government, there is not a single dollar I pay with so much pleasure as the mite I contribute to these poor unfortunate waifs. Whatever other sins I have committed in my life, I do not intend that this one shall be laid at my door. They are thrown out upon the world, and he is less than a man who will refuse them aid. I submit that it is the highest statesmanship to provide for these children. I hope this Convention will put the stamp of their approval upon this thing, and that the Legislature will carry out the objects of these provisions. [Applause.]

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I have but a word to say. I think, sir, if there is anything that the people of this State are more unanimous upon than any other, it is that there shall be no subsidies granted, in any form or shape, to any private corporation, church, or otherwise. And this is nothing more nor less than a perpetual subsidy. You will find that in every party platform.

MR. HILBORN. Allow me a question: What party has a plank in its platform prohibiting the granting of aid to orphans?

MR. ANDREWS. That is where the gentlemen are not logical. Every party has a plank in its platform that any subsidy to any private corporation or individual is a departure from the sound principles of government.

MR. REDDY. Do you call it a subsidy to a corporation to appropriate money to support the helpless orphans of the State, and clothe, feed, and educate them?

MR. ANDREWS. Call it subsidy, or whatever you please, it is an appropriation of money out of the State treasury for purposes other than the legitimate purposes of government.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. President: [Cries of "Question!" "Question!"] I think I am entitled to be heard. The gentleman talks about subsidies. Is it a subsidy for the State to pay for taking care of these orphans? Does not the State save money by letting out the contract to certain parties to take care of these orphans? That is not a subsidy; that is simply paying for value received. There is no question of subsidy about it. The gentlemen have got clear away from the question. Now, there is nothing in this section which prohibits the appropriation of money for the support of orphans in charge of non-religious people. Those having a religious code of morals would be debarred from having charge of orphans, the very ones, it seems to me, who ought to have charge of them. The result is that these non-sectarian gentlemen would have made a deliberate attack upon all religions. You do not deny a man the right of being a juror, or a witness, or anything else, on account of his religious belief, but you do deny him the right of taking care of these orphans on account of his religion. The man who has control of them must not have any religion at all. Now, why should you make this attack upon religious persons? Why deny them this right? The result is simply this, that these gentlemen demand that before any man or any association of persons can have charge of orphans, they must renounce God and His religion. Is it not an attack on religious associations? It seems to me that it is a direct, deliberate attack. The fact that a man has a religious belief ought not to exclude a man from making a contract with the State for the support of these orphans, and accepting pay therefor.

MR. HOWARD, of Los Angeles. Mr. President: I fully agree with the gentleman from San Francisco, Mr. Wilson, and the gentleman from Marin, Mr. Shafter, that these sections are in direct conflict with each other, and ought to be harmonized. If this conflict does not in the end defeat the benevolent purposes of this Convention, it will at least be the cause of endless litigation, which will cost more for lawyers' fees than the amount of the appropriation. The Convention should either do what is necessary to be done to secure the benefits of the former section, or go back and undo its former action. It has been said of Bob Ingersoll that he was one of those unfortunate orators who had a falling out with God Almighty. We have a great many of that kind of orators here.

MR. TULLY. I trust the friends of the orphans will not forget that the ones who are opposing this amendment to-day are the very ones who endeavored to defeat section twenty-two yesterday. I hope they will all be put on record.

MR. FILCHER. That is an unfair charge, to insinuate that those who disagree with you are unfriendly to the orphans. I am as friendly to the orphans, and will go as far as any man to support them. But I disagree with you as to the precise mode of doing it.

MR. TULLY. I vote against the proposition to drag these little children out of comfortable homes and scattering them abroad in the world. Let the gentlemen vote as they please, and go squarely upon the record.

Upon the amendment of Mr. Beerstecher, the ayes and noes were demanded by Messrs. Beerstecher, Brown, Tully, Doyle, and O'Sullivan.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Harvey,	Nelson,
Barbour,	Heiskell,	Neunaber,
Barry,	Herold,	O'Donnell,
Beerstecher,	Herrington,	O'Sullivan,
Belcher,	Hilborn,	Pulliam,
Bell,	Howard, of Los Angeles,	Reddy,
Biggs,	Huestis,	Ringgold,
Blackmer,	Hughey,	Schell,
Boucher,	Hunter,	Shafter,
Brown,	Inman,	Shurtleff,
Casserly,	Johnson,	Smith, of Santa Clara,
Condon,	Joyce,	Smith, of 4th District,
Cowden,	Kelley,	Smith, of San Francisco,
Cross,	Kenny,	Soule,
Crouch,	Larkin,	Stedman,
Dean,	Larue,	Sweasey,
Dowling,	Lavigne,	Swenson,
Doyle,	Lewis,	Swing,
Dudley, of Solano,	Lindow,	Townsend,
Estee,	Martin, of Alameda,	Tully,
Estey,	McCallum,	Van Dyke,
Farrell,	McComas,	Van Voorhies,
Freeman,	McCoy,	Walker, of Tuolumne,
Freud,	McFarland,	Waters,
Garvey,	McNutt,	Weller,
Glascock,	Miller,	Wellin,
Gorman,	Mills,	Wickes,
Grace,	Moffat,	White,
Gregg,	Morse,	Wilson, of 1st District,
Hager,	Murphy,	Winans,
Hall,	Nason,	Wyatt—94.
Harrison,		

NOES.

Andrews,	Kleine,	Stevenson,
Burt,	Laine,	Stuart,
Caples,	Lampson,	Thompson,
Davis,	Mansfield,	Tinnin,
Evey,	Martin, of Santa Cruz,	Turner,
Filcher,	McConnell,	Tuttle,
Hale,	Moreland,	Vacquerel,
Hitchcock,	Ohleyer,	Webster,
Holmes,	Reynolds,	West,
Howard, of Mariposa,	Schomp,	Wilson, of Tehama,
Keyes,	Steele,	Mr. President—33.

MR. WILSON, of First District. Mr. President: I offer an amendment to section thirty-eight, to be added to the section.

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THE SECRETARY read:

"Add at end of section—'provided, that nothing herein contained shall prevent the granting of aid to private institutions such as are referred to in section twenty-two of this article.'"

MR. WILSON. Mr. President: I offer this because section thirty-eight is in conflict with section twenty-two, and I want to make them harmonious.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: These gentlemen are very anxious to get this well hedged in. I do not see why they should not be satisfied with section twenty-two. Now, if these gentlemen had been willing to deal justly and fairly with the whole State, those who opposed this thing would have ceased their opposition. Now, the Convention has come to a definite determination, and that determination I accept in good faith, that the State will permit the appropriation of money for the support of orphans, half orphans, abandoned children, and the indigent sick, those who may be regarded as the wards of the State, allowing them to be maintained, supported, and educated in private institutions as contra-distinguished from State institutions. For one, I accept the result. I accept it as the judgment of this Convention. I am satisfied and anxious to see this Constitution adopted, this provision notwithstanding. But in order to work fairly, this provision ought to extend to all the orphans and half orphans in the State. I know of remote counties in this State where this class of persons can be found, and there is no way open to them by which they can have entrance into these institutions, for the endowment of which we are now providing. If this scheme had been extended to these remote counties, so that their orphans could reap the benefit of it, I would have made no opposition to it. It is not true that we are opposed in any sense to the support of these orphans by the State, if it can be done in such a way as to be fair and just to all persons, whether they come from San Francisco or Siskiyou.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

NOTICE.

MR. McCALLUM. Mr. President: I desire to give notice of an amendment to a rule.

THE SECRETARY read:

"I give notice that I will, to-morrow, move to amend Rule Thirty-five, by adding thereto as follows: 'But when an article of the Constitution is being considered in Convention, the main question shall only apply to the section then under consideration, and to amendments to such section.'"

LEGISLATIVE DEPARTMENT—STATE AID.

THE PRESIDENT. The pending amendment is the amendment offered by the gentleman from San Francisco, Mr. Wilson.

MR. LAINE. Mr. President: I desire to make no argument upon this matter, for I presume it is generally understood. I desire to warn the Convention, however, that it is a general subsidy power; that there is no aid to a railroad or anything else that cannot be granted under that amendment.

MR. CROSS. Mr. President: I do not know just what the purpose of this amendment is, but it accomplishes much more than it appears to accomplish. I call the attention of the Convention to the peculiar wording of this amendment, in the connection in which it is used. The latter part of section thirty-eight provides that the State "shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever." Now, this amendment proposes that the State may become a stockholder in this class of corporations. We do not wish to do that. Let us hold to just what we have done in section twenty-two. I suggest that the error is in the wording of this amendment. Now, sir, I am in favor of allowing these institutions to have State aid. I have so voted from first to last. I am not in favor of putting into this section a provision that will allow the State to subscribe to the capital stock of any corporation. The gentleman who introduced the amendment stated to me that if it was open to this objection he would amend it so that it should correspond with section twenty-two.

MR. BEERSTECHER. As the amendment of the gentleman from San Francisco, Mr. Wilson, reads, if I interpret it correctly, I must say that I cannot vote for it.

MR. WILSON, of First District. If you will move as an amendment your amendment to that section, I will accept it. I did not have that amendment with me, and I desired to get the floor, and so I presented this. If you will present your amendment as an amendment to mine, I will accept it.

MR. BEERSTECHER. Then I will move this amendment:

THE SECRETARY read:

"Add, after the word 'whatever,' in line ten, 'provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.'"

MR. WILSON. I accept the amendment.

The amendment was adopted, on a division, by a vote of 53 ayes to 39 noes.

APPROPRIATION BILLS.

MR. LAINE. Mr. President: I desire to offer a section to be added to the article on legislative department.

THE SECRETARY read:

"SEC. —. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose, to be therein expressed."

MR. LAINE. Mr. President: The object of that section is to prevent this infamous practice of logrolling which has been carried on in this State in its past history. I think it is only fair that every measure should stand upon its own merits. I received this a short time ago from a Senator of this State, now deceased—Senator Angney. I take pleasure in offering that in the name of the deceased Senator.

The section was adopted.

CONGRESSIONAL DISTRICTS.

MR. SHURTLEFF. Mr. President: I offer an amendment to section twenty-seven.

THE SECRETARY read:

"Strike out all after the words 'and county,' in line five, and insert the following: 'unless such county, or city and county, to be divided, shall contain a population greater than the number required to form one Congressional district. Any county, or city and county, containing a population greater than the number required for one Congressional district shall be formed into one or more Congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached, by compact adjoining Assembly districts, to a contiguous county or counties, and form a Congressional district. In dividing a county, or city and county, into Congressional districts, no Assembly district shall be divided so as to form a part of more than one Congressional district, and every such Congressional district shall be composed of compact contiguous Assembly districts.'"

REMARKS OF MR. SHURTLEFF.

MR. SHURTLEFF. Mr. President: Every member will see that as the section now stands there is liable to be a large fraction, perhaps some sixty or seventy thousand people that would inevitably be disfranchised in dividing a large county, or city and county. That evil will be liable to increase hereafter. Under the operations of the Federal Constitution in seventeen hundred and eighty-nine, it was required that each Representative in Congress should represent a population not less than thirty thousand. After the census of seventeen hundred and ninety Congress made an apportionment, and provided that each Representative in Congress should represent thirty-three thousand inhabitants. After the census of eighteen hundred the same basis was adhered to. In eighteen hundred and ten it required thirty-five thousand. In eighteen hundred and twenty it required forty thousand. In eighteen hundred and thirty it required forty-seven thousand two hundred. In eighteen hundred and forty it required seventy thousand. In eighteen hundred and fifty it required ninety-three thousand four hundred and twenty-three. In eighteen hundred and sixty it required one hundred and twenty-seven thousand three hundred and eighty-one. In eighteen hundred and seventy, the basis at present, it is one hundred and thirty-one thousand four hundred and twenty-five. This number will increase, inevitably, and the larger the Congressional district the greater the grievance. It is very likely that by the next apportionment the number required will be somewhere near one hundred and fifty thousand. Consequently, unless we provide something like this, you are liable to have seventy-five thousand inhabitants in San Francisco disfranchised. One half of the older States that have large cities divide their cities upon this principle. The City of New York has heretofore done so. I think the City of Boston has for the last forty years had one district that extended out into a part of Middlesex County. It is very likely that from the members of the present House of Representatives, two hundred and ninety-three, the number will not be increased, while the total population will be increased in the country. Inasmuch as the House is getting to be a very numerous body, almost three hundred, it is probable that the districts will be made larger, and the only remedy is to provide in this Constitution that they can extend out to contiguous territory and form a Congressional district from the adjacent fraction that may be remaining.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I have been struggling to get the floor to present an amendment upon this very same question. It is possible that the proposition of the gentleman covers the ground, but it is so long that it is hard to understand it. My impression was that the difficulty might be obviated by making an exception, such as I have provided for, to go in at the same place, that is, in cases where one county, or city and county, has more population than the ratio required for one Congressman. I see the same objection the gentleman mentions, and that San Francisco might have enough population for one Congressman and three quarters enough for another, and would lose the latter entirely, because under this section it could not run out and take in enough of the adjacent territory to make a district. I like the section as it stands, and I like the principle of it. It is aimed at the system of gerrymandering the State. I think my amendment is better and only reaches to that kind of an exception where one city, or one city and county has more than the necessary population. In that case they can attach contiguous counties. I would like to have my amendment read, because I think that it would be understood more readily than the other.

THE SECRETARY read:

"Amend section twenty-seven by inserting after the word 'county,' second occurring in line five, the following: 'Except in cases where one county, or city and county, has more population than the ratio required for more than one Congressman.'"

MR. ESTEE. Mr. President: Unless the amendment offered by the gentleman from Napa, or the one introduced by Mr. Barbour, or some

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amendment of that kind be adopted, it would be very easy for California to lose a member of Congress, and yet have a proper number of inhabitants to entitle her to an additional member. We will take San Francisco. San Francisco might be entitled to one member and three quarters of another one, by population. Alameda and Santa Clara might have enough population for one and one quarter of another, and yet the whole three counties, under this section, could not have three Congressmen, and a population not sufficient for one Congressman would be disfranchised.

MR. LAINE. Suppose San Francisco has a fraction over enough, and Alameda has a light fraction more than enough, then you would have to divide Alameda too.

MR. ESTEE. It is better to divide a county than to lose a representative. It is a very easy matter to divide a State so that the people will be represented in Congress.

Mr. McCALLUM. It is a mistake to suppose, that because the State does not district the State properly, that therefore it would lose a Congressman.

MR. ESTEE. If you put into this Constitution that the State shall only be districted in a certain way, it will.

MR. McCALLUM. If we are entitled to six Congressmen we will get them. This does not affect the representation of the State.

MR. ESTEE. It affects it in this way: If the Constitution provides that the State shall be districted in a certain way, and that results in losing a population sufficient to give us one representative, as I have pointed out, the State would thereby lose a representative.

MR. MILLER. If we had population enough for one Congressman outside of these districts and parts of counties, we could elect one from the State at large.

MR. ESTEE. You could if the law prescribed it. It would not be fair for the people of the whole State to select a member of Congress who belonged to a particular locality.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. I say that the representation of the State will be affected in no degree whatever. The State will be entitled to just so many Congressmen as the apportionment shall provide. It would make no difference so far as that representation is concerned, whether they are properly or improperly distributed in the State. I do not know how the precedence may be in some of the States referred to, except as stated by the gentleman from Napa. I believe, however, that the general course is to make the division by counties, as is contemplated by section twenty-seven of the article on legislative department. This point was not discussed, I believe, in the Legislative Committee, but I do not think that there is any sufficient reason given here for the change which is proposed. There would be no disfranchisement as has been assumed. The City of San Francisco, I suppose, would be entitled to two Congressmen. If the City of San Francisco should have fifty thousand additional population, that fifty thousand, it is true, would not be represented, but to say that the city would therefore be disfranchied would not be correct. The State would have the same representation. I confess that I have no idea how it might work to allow San Francisco to run over, and take additional territory in Santa Clara, San Mateo, or Alameda. But at any rate, there seems to be some question whether it would work well or not, and I submit that the precedents are generally the other way. This might be remedied by simply providing for the election of some of the Congressmen at large, as is done in a number of the States.

MR. SHURTLEFF. Mr. President: I totally disagree with the gentleman from Alameda.

THE PRESIDENT. The gentleman has already spoken to his amendment.

MR. SHURTLEFF. I desire, however, to state, in the first place, that I drew this amendment in such a way that in drawing from the counties to make up a Congressional district, that we should take contiguous territory, and also that the districts in the State should be left in compact form, and divided by Assembly districts, and also that no Assembly district should be divided so that a part of one Assembly district should be in one Congressional district, and another in another district. I regard it as very important, that the section should be carefully drafted, because there has been great abuses in dividing the State into Congressional districts. So far as San Francisco not being disfranchised is concerned, I totally disagree with the gentleman from Alameda. If seventy thousand people there have no chance to vote for Congressmen, they are disfranchised, and it does not make it any better for them because the balance of the State get that fraction.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Barbour.

The amendment was adopted, on a division, by a vote of 57 ayes to 54 noes.

The amendment, as amended, was adopted.

LOBBYING.

MR. O'SULLIVAN. Mr. President: I send up an amendment.

THE SECRETARY read:

"SEC. —. Any person who seeks to influence the vote of a member of the Legislature, by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony, and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, proven to have been influenced in his vote or action upon any matter pending before the Legislature, by any reward, or promise of future reward, shall be guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office of public trust. Any Act passed by the Legislature, the passage of which can be proved to have been influenced by personal solicitation of members, or on the part of any person or persons interested in the same, shall be void."

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: My purpose is to provide for the prevention and punishment of lobbying which has assumed dangerous proportions of late years, and which gentlemen must admit requires a remedy. It is scarcely necessary for me to particularize regarding the doings of the lobby around our legislative halls for years past. They are notorious and known to all. Wretches who ought to be in State Prison hover around the Legislature from the beginning to end of the legislative session seeking to influence votes for sinister purposes; following this occupation as a profession, and making it a profitable one. Gentlemen who have represented San Francisco have told me that they could not secure a renomination because they had refused to vote on important measures at the dictation of Brady and Mannix, Higgins, and Gannon, the railroad lobbyists, and other corruptionists. It is a fact beyond question, that the lobbyists have more influence in the halls of our Legislature than honest members of either house. This corruption of the law making power is an evil of the most serious character, and I presume that no gentleman will deny that it demands curative measures. Lobbying is a dirty infamous business, a crime of the most flagrant character, I care not who engages in it, or what their character or calling. I think we should in this Constitution adopt some measure for its prevention and punishment. If my proposition is not acceptable, or is unsuited to meet the case, I trust some gentleman will offer an amendment calculated to provide the necessary reform, for the suppression of the lobby and the punishment of the criminal element engaged in this infamous business.

MR. MURPHY. Mr. President: I offer an amendment to the amendment.

THE SECRETARY read:

"Add the following—'and any candidate for any office, either legislative or otherwise, who shall solicit the vote of any delegate to any political Convention for a nomination in any political party, shall be forever disqualified from holding any office of profit and trust.'"

Messrs. Inman, Wyatt, Schomp, Boucher, and Van Dyke demanded the previous question, which was ordered by the Convention, on a division, by a vote of 53 ayes to 34 noes.

Upon the amendment of Mr. Murphy, the ayes and noes were demanded by Messrs. Freud, Grace, Barbour, Gorman, and Swenson.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barbour,	Harrison,	Moreland,
Beerstecher,	Heiskell,	Murphy,
Bell,	Herold,	Nelson,
Condon,	Hitchcock,	Neunaber,
Dean,	Hunter,	Reynolds,
Dunlap,	Johnson,	Schomp,
Evey,	Joyce,	Shafter,
Farrell,	Kelley,	Smith, of San Francisco,
Filcher,	Kenny,	Swenson,
Freeman,	Kleine,	Vacquerel,
Freud,	Larkin,	Wellin,
Gorman,	Mansfield,	White,
Grace,	McConnell,	Winans—40.
Hager,		

NOES.

Andrews,	Hilborn,	Rolfe,
Ayers,	Holmes,	Schell,
Barry,	Howard, of Mariposa,	Shurtleff,
Belcher,	Huestis,	Smith, of Santa Clara,
Biggs,	Hughey,	Smith, of 4th District,
Blackmer,	Inman,	Soule,
Boggs,	Keyes,	Stedman,
Boucher,	Laine,	Steele,
Brown,	Lampson,	Stevenson,
Burt,	Larue,	Stuart,
Caples,	Lavigne,	Sweasey,
Casserly,	Lewis,	Swing,
Charles,	Lindow,	Thompson,
Cross,	Martin, of Alameda,	Tinnin,
Crouch,	Martin, of Santa Cruz,	Townsend,
Davis,	McCallum,	Tully,
Dowling,	McComas,	Tuttle,
Doyle,	McCoy,	Van Dyke,
Dudley, of Solano,	Miller,	Van Voorhies,
Estee,	Mills,	Walker, of Tuolumne,
Garvey,	Nason,	Waters,
Glascock,	O'Donnell,	Webster,
Gregg,	Ohleyer,	Weller,
Hale,	O'Sullivan,	Wilson, of Tehama,
Hall,	Pulliam,	Wilson, of 1st District,
Harvey,	Reed,	Wyatt,
Herrington,	Rhodes,	Mr. President—81.

Upon the amendment of Mr. O'Sullivan, the ayes and noes were demanded by Messrs. Hager, O'Sullivan, Beersteecher, Lindow, and Condon.

THE PRESIDENT. The question recurs on the adoption of the amendment offered by the gentleman from San Francisco, Mr. O'Sullivan. The Secretary will call the roll:

THE SECRETARY commenced to call the roll.

MR. LAINE. I ask for a division of the question.

MR. WILSON, of San Francisco. I would like to have it divided if possible.

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THE PRESIDENT. Call the roll.

[Cries of "divide the question!"]

THE CHAIR. The gentlemen will be seated.

MR. O'SULLIVAN. [When Mr. Stedman's name was called.] I call for Mr. Stedman to vote.

MR. ESTEE. Change my vote from aye to no on the last clause of the section.

MR. VAN DYKE. You ought to have seen that before.

MR. ESTEE. What is the matter with you?

MR. VAN DYKE. I am disgusted.

MR. STEDMAN. I desire to change my vote to no.

THE PRESIDENT. You did not vote at all.

MR. BEERSTECHER. I ask Mr. Tinnin to vote.

[Cries of "call the absentees!"]

The roll-call was continued amid great confusion, and the President announced that the amendment was adopted by the following vote:

AYES.

Andrews,	Hager,	Nelson,
Ayers,	Harrison,	Neunaber,
Barbour,	Herold,	O'Sullivan,
Beerstecher,	Herrington,	Reynolds,
Bell,	Hitchcock,	Ringgold,
Boggs,	Howard, of Mariposa,	Schomp,
Brown,	Hunter,	Shafter,
Casserly,	Johnson,	Smith, of 4th District,
Condon,	Joyce,	Smith, of San Francisco,
Crouch,	Kenny,	Soule,
Davis,	Kleine,	Sweasey,
Dean,	Larkin,	Swenson,
Dowling,	Lavigne,	Tuttle,
Doyle,	Lindow,	Vacquerel,
Evey,	Mansfield,	Waters,
Farrell,	McCallum,	Webster,
Filcher,	McComas,	Wickes,
Freud,	McConnell,	White,
Gorman,	Moreland,	Wilson, of Tehama,
Grace,	Murphy,	Mr. President—60.

NOES.

Belcher,	Inman,	Schell,
Biggs,	Kelley,	Shurtleff,
Blackmer,	Keyes,	Smith, of Santa Clara,
Boucher,	Laine,	Stedman,
Burt,	Lampson,	Steele,
Caples,	Larue,	Stevenson,
Charles,	Lewis,	Stuart,
Dunlap,	Martin, of Alameda,	Swing,
Estee,	Martin, of Santa Cruz,	Thompson,
Freeman,	McCoy,	Townsend,
Garvey,	McNutt,	Tully,
Glascock,	Miller,	Van Dyke,
Gregg,	Mills,	Van Voorhies,
Hale,	Nason,	Walker, of Tuolumne,
Hall,	O'Donnell,	Weller,
Harvey,	Ohleyer,	Wellin,
Heiskell,	Pulliam,	Wilson, of 1st District,
Holmes,	Reed,	Winans,
Howard, of Los Angeles,	Rhodes,	Wyatt—58.
Hughey,	Rolfe,	

THE PRESIDENT. The question is: Shall this report be engrossed and ordered to a second reading?

Upon the question of ordering the article engrossed for a second reading, the ayes and noes were demanded by Messrs. Grace, Glascock, Lampson, Tully, and Keyes.

THE PRESIDENT. The Chair will state that if the Convention refuses to order a second reading, it is a rejection of the whole article.

The roll was called, and the article ordered engrossed by the following vote:

AYES.

Andrews,	Freeman,	Nason,
Ayers,	Freud,	Nelson,
Barbour,	Gorman,	Neunaber,
Barry,	Grace,	O'Sullivan,
Beerstecher,	Hall,	Reddy,
Belcher,	Harrison,	Reed,
Bell,	Heiskell,	Ringgold,
Biggs,	Herold,	Rolfe,
Boggs,	Herrington,	Shafter,
Boucher,	Howard, of Los Angeles,	Shurtleff,
Brown,	Howard, of Mariposa,	Smith, of 4th District,
Burt,	Hunter,	Smith, of San Francisco,
Charles,	Johnson,	Soule,
Condon,	Joyce,	Stedman,
Cross,	Kenny,	Stuart,
Crouch,	Larkin,	Sweasey,
Davis,	Larue,	Tuttle,
Dean,	Lindow,	Walker, of Tuolumne,
Dowling,	McCallum,	Waters,
Doyle,	McComas,	Wellin,
Dudley, of Solano,	McConnell,	Wickes,
Dunlap,	McNutt,	White,
Estee,	Miller,	Wilson, of Tehama,
Evey,	Moreland,	Wyatt,
Farrell,	Murphy,	Mr. President—77.
Filcher,		

NOES.

Blackmer,	Kleine,	Schomp,
Caples,	Laine,	Smith, of Santa Clara,
Casserly,	Lampson,	Steele,
Garvey,	Lavigne,	Stevenson,
Glascock,	Lewis,	Swing,
Hager,	Mansfield,	Thompson,
Hale,	Martin, of Alameda,	Tinnin,
Harvey,	Martin, of Santa Cruz,	Townsend,
Hilborn,	Mills,	Tully,
Hitchcock,	Morse,	Vacquerel,
Holmes,	O'Donnell,	Van Dyke,
Huestis,	Ohleyer,	Van Voorhies,
Hughey,	Pulliam,	Webster,
Inman,	Reynolds,	Weller,
Kelley,	Rhodes,	Winans—46.
Keyes,		

NOTICES.

MR. WICKES. I hereby give notice that on to-morrow, February sixth, I will move a reconsideration of the vote by which the amendment of Mr. O'Sullivan to section relative to lobbying, and consequently the vote by which the whole article was ordered engrossed.

MR. WHITE. I hereby give notice that I will, on to-morrow, move to reconsider the vote on the amendment, this day offered by Mr. McCallum, to section twenty-four of the article on legislative department.

MR. SCHELL. I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the amendment of the Committee of the Whole to section twenty-four was adopted. Also, to reconsider the vote by which the Convention refused to strike out from said amended section the following: "But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in the title."

FUTURE AMENDMENTS.

THE PRESIDENT. The next business on the calendar is the report of the Committee on Future Amendments. The Committee of the Whole offer no amendments to the report. The Secretary will read the article.

THE SECRETARY read:

"SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of said Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as may be deemed expedient. Such amendment or amendments shall be published in full in each county in the State wherein a newspaper is published for at least three months next preceding the election at which they are submitted. Should more than one amendment be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that they can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting therefor, such amendment or amendments shall become a part of this Constitution.

"SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall think it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at said election, on the proposition for a Convention, shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. Said Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, which shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election, at such place as the Legislature may direct. The Constitution that may be agreed upon by such Convention shall be submitted to the people at a special election to be provided for by law, for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare by his proclamation, such Constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California."

MR. LAINE. Mr. President: I send up an amendment to section one.

THE SECRETARY read:

"Amend section one by striking out the words 'two thirds,' in line two, and insert 'a majority,' and strike out the words 'of the two houses,' in line three, and insert the word 'house.'"

MR. LAINE. Mr. President: One of the great difficulties of the old Constitution was the inconvenient and troublesome mode of amendment. By the old Constitution one Legislature had to propose and another indorse, and then it had to go to the people. Now, it strikes me that a majority of all the members is sufficient to recommend a section to the consideration of the people. The second amendment in regard to the third line is a mere verbal amendment.

MR. BLACKMER. Mr. President: The committee that proposed this took in consideration the fact that the present Constitution provided that an amendment must be proposed in one Legislature, and then, if adopted, it must then be entered upon the Journal, and be presented to the next Legislature, and they must also vote in favor of it before it could be submitted to the people. That could be done by a majority of

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the members of the Legislature. But they were obliged to pass it through two sessions before the people could act upon it. The committee did not think it wise to compel the Legislature to submit it to a succeeding Legislature, but thought it better to refer it directly to the people. But, taking into consideration that change, they thought it but just that it it should take a two-third vote of the Legislature to propose an amendment. I see no reason to change my opinion from what it was in the committee. I think it is wise to compel two thirds of the Legislature to propose an amendment, if it is to go direct to the people; otherwise, we might have a majority of the Legislature at every session proposing amendments to the Constitution, and have them continually before us. My judgment is that it will be better to let that part stand as it is—require two thirds to propose it—and then let them refer it directly to the people. The other amendment I see no objection to.

MR. HAGER. Mr. President: I would like to have a division of the question. I am in favor of one and against the other. The first amendment proposed, I think, is injudicious. The Legislature, by a majority vote, may very frequently submit propositions to the people under a temporary impulse; but if it requires a two-third vote, there will be more deliberation and care. Under the old Constitution it requires two successive Legislatures to propose an amendment to the people. Now, in lieu of that, one Legislature can do it, and I think a two-third vote should be required. The second amendment I am in favor of. If we can have a division of the question, I will vote against the first and for the second.

MR. CROSS. Mr. President: I am opposed to the amendment offered by the gentleman from Santa Clara. I am opposed to amendments to the Constitution being made easy, and that is the proposition, as I understand it. When it comes to a matter of changing the fundamental law I think we should be somewhat conservative, and I, for one, am opposed to this system of making amendments to the Constitution easy. It seems to me that no amendment should be made until such time as two thirds of the members of each house shall say that there is sufficient cause to submit a proposition of change to the people.

MR. WHITE. Mr. President: I am also opposed to this amendment, on the same ground as the gentleman who last spoke. It would make the Constitution a foot-ball, to be kicked between the two parties. If one party changed it the next party that come in would do the same. I think some little check ought to be left on the power to change, and it will be a great deal simpler now than it was before, because it will only require one Legislature to submit it, and the people can adopt or reject it. I hope the committee's report will be adopted.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Laine.

The amendment was rejected.

MR. VAN DYKE. Mr. President: I offer an amendment.

THE SECRETARY read:

"In section one strike out from the word 'expedient,' in line seven, to the word 'should,' in line ten.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: That proposes to strike out the portion of the section which requires that the amendments shall be published in full in each county in the State wherein a newspaper is published, for at least three months next preceding the election at which they are to be submitted. Now, preceding that, it says that "it shall be the duty of said Legislature to submit such proposed amendment or amendments to the people in such manner and at such time as may be deemed expedient." It seems to me, Mr. President, that with that requirement to publish them for three months in every county in the State—we have fifty-two counties now—it would be difficult to prove that that part of the Constitution had been complied with. If it should be omitted for a portion of a week, in any one of the fifty-two counties, it might vitiate the whole amendment, although adopted by the people by a large majority. I think it is dangerous to put such an inflexible requirement in the Constitution as a condition precedent to the adoption of an amendment. I think the other clause is amply sufficient—that it shall be submitted in such manner and at such time as may be deemed expedient. That requirement which I move to strike out is not in the old Constitution. It has been put in there by the committee, and I think it is a great mistake.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President. I do not think that it is advisable to strike that out. The clause which provides that it shall be submitted to the people in such a manner and at such time as may be deemed expedient, has nothing to do with the publication of it. The publication of it has nothing to do with submitting it to the people for their approval or rejection. It is not an untried thing. It is found in other Constitutions. I am not sure whether it is in the Constitution of Missouri or not, or the Constitution of Pennsylvania, [laughter,] but I think it is a very necessary and essential thing, that when these amendments are proposed they shall be published so that the people may know what they are, and understand them. If the Convention thinks that three months is not the proper time, let it be amended in that particular, but do not let us strike out this idea that it must be published in every county in the State. It is the foundation of the new government, that the people shall know what they are voting upon. There is no other way but by publication, and I hope that this amendment will not prevail.

MR. WYATT. Mr. President: I hope that the amendment of the gentleman from Alameda will prevail, or something equivalent to it. The proposition now places the matter in too uncertain a condition, as to whether the requirements of the law could be complied with, or would be complied with. It would also put the fate of an amendment into the hands of any newspaper published in this State, in any county where there was but one newspaper. I hope therefore that the amendment will be adopted.

The amendment was adopted on a division, by a vote of 47 ayes to 35 noes.

MR. BELCHER. Mr. President: I send up an amendment.

THE SECRETARY read:

"Insert after the word 'time,' in line seven, the words, 'and after such publication.'"

MR. BELCHER. Mr. President: The last amendment having been adopted striking out the clause which provided that an amendment should be published, there should be some provision for giving notice, and I have offered that, so that the Legislature itself will provide how the publication shall be made. It could provide for giving notice the same as it did for calling this Convention. I think some provision of that kind should be in.

MR. BLACKMER. Mr. President: I hope, now that the other sentence has been stricken out, that this will be adopted to provide that the Legislature must publish it in some way, and to leave it to the Legislature to say what that publication shall be.

MR. ROLFE. Mr. President: I voted to strike out this portion which has just been stricken out. Now, that that has been stricken out I hope that this amendment offered by the gentleman from Butte will be adopted. I had an amendment something similar to it, and I am in favor of having some kind of publication.

The amendment was adopted.

MR. TINNIN. Mr. President: I offer an amendment to section two.

THE SECRETARY read:

"Amend section two, lines seven and eight, by striking out the words, 'of both branches of the Legislature, which,' and insert the following words: 'of the State Senate who.'"

MR. TINNIN. Mr. President: The object of that amendment is to curtail the great number that is to assemble here for the purpose of making Constitutions. Now, the members of this body have had some experience of the result of having such a great body of men. Before another Constitution is required in this State it is evident that the members of the Senate and House will have materially increased from the present number. They might perhaps attain the number of three hundred or four hundred. Such a body would be totally unwieldy. If we had had that law in force at this time the Constitution we are making would have been finished months ago.

MR. CROSS. There cannot be more than one hundred and twenty members as it is.

MR. AYERS. Mr. President: I hope that the amendment will not prevail. It is true that large bodies are unwieldy and move slowly, but they move surely and justly, and they are representative in their character. They take in and represent all the diversified interests of the State, and every measure is thoroughly and exhaustively discussed before it is acted upon. I hope never to see in this State a small oligarchy of forty men sitting in council for the purpose of giving to the State its organic law.

MR. TINNIN. Was not the Constitution that we are living under now made by a smaller number than that? However, I ask leave to change my amendment by striking out the word "Senate," and inserting the word "Assembly."

THE PRESIDENT. If there be no objection the gentleman will be permitted to qualify his amendment.

MR. BLACKMER. Mr. President: The old Constitution under which we are living provided that a Constitutional Convention should not consist of a number of members less than that of both branches of the Legislature. That compelled the Legislature to provide for at least one hundred and twenty, and they saw fit to increase that to one hundred and fifty-two. Now, sir, the committee took this matter into consideration, that a large body was unwieldy, but they did not think it best to put an iron rule upon the Legislature, that they must provide so many whether they wished to or not, and yet they desired to have the number large enough, so that it would insure a fair representation—so that it would represent every varied interest of the whole State. They thought they had arrived at that by providing that it should not exceed that of both branches of the Legislature. Now, it will be competent for the Legislature to say, if they wish, that it shall not consist of more than forty members, or eighty members, or that it may be as large as both branches of the Legislature, but they cannot exceed that. I think it is better to fix a maximum rather than a minimum. It leaves the Legislature an opportunity to increase to one hundred and twenty, but it can not go beyond that. I think it is not wise to reduce it to so small a number even as the members of the Assembly. I hope the amendment will not prevail.

MR. LARKIN. Mr. President: I am in favor of this amendment. For four months I have attended the sessions of this body, and saw the workings of it. I am satisfied that the interests of the State, and of the whole people of the State, demand a number not to exceed eighty. Had there been eighty members selected to this Convention, they would have completed their work before this and been home. That is a sufficient number to submit it to the people. There are persons that are disposed to take up all the work of the last four months and do it over again. Some members saw fit to absent themselves when matters were up in Committee of the Whole, and now ask leave to review everything that comes up. I believe that members of the Constitutional Convention should finish their work in a reasonable time.

MR. WHITE. Mr. President: I hope that the amendment will not be adopted, because I think of all conventions or assemblages that can be got together, it is more necessary that the people should be represented in the Constitutional Convention than in any other. I am aware that there has been a great deal of slow work here in consequence of a large body, but I do not think it will result badly. We have got the

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views of the whole State thoroughly, and we will probably give a Constitution that will be adopted by the whole State in consequence. Now, it will be a long time before there is another Convention called, because we have provided a very easy mode of amending the Constitution. I do not think a Convention will be necessary for years and years; but if it is necessary, and the people wish to call it, they should be represented from one end of the State to the other, and that cannot be done by a small body. I hope that the amendment will not be adopted, and that we will not lose our time discussing on this floor such amendments as I consider that.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Trinity, Mr. Tinnin.

The amendment was rejected.

MR. MCCALLUM. Mr. President: I send up an amendment.

THE SECRETARY read:

"In section two, strike out, in line five, the words, 'on the proposition for a Convention.'"

MR. MCCALLUM. Mr. President: The Committee on Future Amendments have made several good changes, I think, from the present Constitution, but this is one proposed innovation which I think is not a good one. Our present Constitution requires that there shall be a majority of all the votes cast at the election. The Committee has inserted the words which I propose to strike out. If the section should be adopted, as reported by the Committee, a majority of the votes upon the proposition or measure will determine. They provide that the vote shall be taken at the general election, which I think, is very proper. Now, if there should be one hundred and fifty thousand votes cast at that election, as might be the case, and but twenty thousand votes cast upon this proposition, ten thousand and one votes would carry the proposition for a Constitutional Convention. We know how little attention is given to these questions. The probability is, that at the last election, thousands of votes were cast upon it from the circumstance that the tickets were printed either one way or the other. Now, sir, it is provided that the Legislature shall vote but once upon this question. I think the committee has made a good change in providing that there should be a two-third vote, but when it comes to the question whether the people shall call a convention or not, I see no other proper course except that which we have had heretofore, requiring a majority of all the votes cast. When a Constitutional Convention is called, it should be called under such circumstances as to clearly indicate that a majority of the people voting at the election are in favor of it.

MR. BLACKMER. Mr. President: It is undoubtedly true that a great many people did not vote one way or the other upon the question of calling this Convention, but if they are to understand, by the terms of the Constitution, that their vote is to determine upon this one proposition, they will be very likely to look out for it. I believe that if they are to call a Constitutional Convention, they ought to vote fair and square upon that proposition, and the votes cast for and against it, should determine whether a Constitutional Convention should be called or not. I hope the amendment will be rejected.

The amendment was rejected.

THE PRESIDENT. The question is: Shall this article be engrossed and read a second time?

So ordered.

REVENUE AND TAXATION.

THE PRESIDENT. The next measure on the file is the article on revenue and taxation.

THE SECRETARY read all the amendments offered by the Committee of the Whole, and then the amendment to section one, as follows:

"SECTION 1. Taxation shall be equal and uniform throughout the State."

MR. JOHNSON. Mr. President: I offer a substitute for section one.

THE SECRETARY read:

"SECTION 1. Taxation shall be uniform throughout the State."

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: The word "equal" has made a great deal of difficulty in our taxation in this State. Now, it is well known that the decision in the case of the People vs. Hibernia Bank goes upon the ground of the impossibility of Assessors assessing credits on an equal basis. That is the basis upon which that decision is rendered, and the word "equal," in the thirteenth section, in the eleventh article of the present Constitution, has made all this trouble about the taxation of credits and mortgages. Now, sir, if we eliminate that word, why then we escape from all that difficulty; whereas, if we retain it, and if we tax credits, as has been shown manifestly to be the sense of this Convention, the Supreme Court may say hereafter that these Assessors cannot assess these credits on an equal basis, and then we will be just where we started from. Now it is a very easy matter to escape all this difficulty by eliminating that word "equal." The only requisite in taxation is that it shall be uniform. It is so laid down in our textbooks. It must operate uniformly upon persons and subjects, and therefore there is no impropriety in putting that word in the Constitution; but when you add the additional word "equal" to it, then you put in an element of difficulty. Then it is for the Supreme Court to say, as they have said heretofore, whether or not these credits can be taxed on an equal basis; whether they can be assessed equally. Now, in a great many Constitutions there is nothing said about equality or uniformity, and the whole thing is left to the Legislature, but still the Legislature, in enacting these tax laws, always enacts them upon this basis, that the taxes shall be uniform. It is a fundamental requirement. No precedent can be shown where any taxation that is not uniform has been upheld. But this word "equal" has made the difficulty, as I said before. It has been a direful spring of woes unnumbered, and the people of this State, from one end of it to the other, have spoken out in favor of the taxation of credits. Now if we propose to tax credits, and it has been shown by a very large majority that that is the sense of the Convention, I say that that word "equal" should be eliminated, so as not to make an element of discord hereafter in construing this Constitution. If the word "equal" had not been in there, the decision in the case of the people against the Hibernia Bank would never have been made as it was. Now, by perpetuating that word we will run the gauntlet of incurring the same kind of a decision.

MR. CAPLES. I desire to ask if in the gentleman's opinion the word "uniform" is not subject to the same objection as the word "equal?"

MR. JOHNSON. No, sir; I think not.

MR. CAPLES. Define the two.

MR. JOHNSON. The idea of uniformity is that it shall be uniform as far as that class of subjects is concerned. There are different methods of taxation. For instance, you tax credits in one way, while you tax land and personal property in another. Of course there will always be an effort to approach equality. The basis of taxation is the protection that the taxpayer derives from government, and there is no reason in the world for putting in this word "equal." Of course the tax that a man pays for the protection he derives should be based upon the value of his property as near as can be done. But if you put in an ironclad word of this kind, then it has got to be construed just as you put it into the Constitution.

MR. CAPLES. Strike both out.

MR. JOHNSON. I do not think it would be advisable to do that. I think there should be a limit imposed upon the Legislature that the basis should be uniform. We do not want one man taxed different from another man. We do not want one subject taxed different from another subject of the same kind. But let the tax be uniform. There never was any difficulty about the word "uniform," but the whole difficulty has arisen out of the word "equal." I think, therefore, that this word should be eliminated. In noticing the Constitution of Pennsylvania I think you will find this section which the Committee on Taxation reported for the adoption of this Constitution:

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

Now, the very able Chairman of that committee is not here, but he is a man about as well posted in Courts as any gentleman on this floor, and he knew the difficulty that this word "equal" had made, and he left it out as a good lawyer should have left it out.

MR. DUDLEY, of Solano. The Chairman of the committee, the first move he made, was to move to insert the language of the old Constitution.

MR. JOHNSON. Then there must have been some very sensible men on that committee besides the Chairman.

MR. WILSON, of First District. Do you take back what you said about the Chairman of the committee?

MR. JOHNSON. If the Chairman of the committee was here I might be disposed to do so, but in his absence I will not retract. I insist that there can be no difficulty in using the word "uniform." Cite me to any precedent where this word "uniform" has made trouble. But if it has made no trouble then it must commend itself to our judgment, because our laws, especially our tax laws, should be uniform throughout the length and breadth of the State. It has made no trouble, but the word "equal" has made the trouble.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: As I understand it, the Supreme Court has virtually decided that these are convertible terms, and that they have a similar signification each to the other. Such a change as would be wrought, in the opinion of the honorable member from Sonoma, would not, in my judgment, result from striking out the word "equal." But there would result another of our departures from the language of the existing Constitution. For thirty years we have lived under the influence of that provision which contains both of these amendments in conjunction, and a Supreme Court has interpreted their meaning fully. That meaning would not be altered by the verbal change suggested. I believe, therefore, in the propriety of keeping the language of the Constitution as it is. It is in no sense in conflict with the other provisions adopted by this Convention in Committee of the Whole in reference to the entire department of taxation. This Convention will prove a curse to this State if we do not confine ourselves to proper action. If we run into wild and latitudinarian principles, we shall not stop until we reach the very verge of anarchy and discord. Is there nothing substantial? Will we stand by nothing that is in the old and time honored Constitution? Will we trample it into the dust, or scatter it into the air, or will we preserve at least some fragments of its present entity? Those who think with me will stand by the old Constitution wherever change is not absolutely required.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I would like to support the amendment offered by the gentleman from Sonoma, but I think it might be made broader, and strike out section one. There is no harm in the idea of uniform taxation, but it is already provided for. It is provided for in the bill of rights, which declares that all laws of a general nature shall have a uniform operation. A law levying a tax is a general law. Now, sir, there never has been, there is not, and there never will be equal taxation. For us to assert in the Constitution that there shall be, is to assert a falsehood and a physical impossibility. To insert it in the Constitution is to give scope for ten thousand quibbles. Every time the citizen pays his taxes he feels that he is unequally taxed; and taxation really, sir, is not based upon the principle, strictly speaking, of equality of taxation at all, under any form of government that has ever been set up among men, or that has ever been conceived of among men.

MR. JOHNSON. You say there is a provision requiring a uniformity.

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Is there any objection to repeating it except the mere matter of repetition?

MR. BARBOUR. No; further than that I do not want to give a chance for construction. I have said that there is no such thing as equal taxation under any form of government that ever could be conceived of by man. The idea of taxation is governed by considerations of public policy as well as for the purpose of raising revenue. No government on earth pays taxes that does not pay taxes with a view to public policy. The taxation of the Federal Government, its tariff, are assured by the advocates of it to be as much for protection as for revenue. So it will be said of all sorts of taxes upon business which is not exactly legitimate, or ought not to be declared to be legitimate business, or which it is the policy of the State to discourage—taxes upon dance houses, taxes upon certain kinds of shows, are levied with a view not only of the raising of revenue but of discouraging the business. The same is true with almost all sorts of license taxes. Hardly any of them can be said to be equal taxation. Gentlemen will find, if they have ever investigated the subject of litigation upon the subject of taxation and assessments, that this very word "equal" taxation has invariably come up as a subject of judicial construction. It is eternally raised as an objection to the tax, and that is the reason why all of the modern Constitutions have left the word out. In the whole of the thirty-eight States of the Union but thirteen of the States retain the words "equal taxation," and not one single one of them is of recent date, plainly showing that the members of these Conventions understood the difficulty into which they would plunge by attempting to do an impossibility, and throw wide open the doors for litigation and for construction upon the use of that word.

Now, sir, we ought not, here in this Constitution, to tie the hands of the Legislature. In the future it may be necessary, by the use of the taxing power—that great attribute of the sovereignty of the State—in consideration of public policy, to levy a certain kind of a tax. Now, in the future an income tax might be necessary to be levied; but an income tax is not equal taxation. The Government of the United States never established the income tax upon other grounds than, first, because it fell upon those that were most able to bear the burden of taxation, and because the policy of the Government was to put a tax upon articles of luxury. Grading taxation according to the amount of income is not equal taxation. So with regard to the consideration of the limitation of land monopoly. We do not know—the gentlemen who are figuring now in this Convention to insert in the Constitution any provisions whatever for the limitation of land owning—but that in the future events may so shape themselves that legislative action is absolutely necessary; and at that time it may be determined, too, that a graded tax upon lands may be thought to be the best method of reaching the evil of land monopoly. I call the attention (I have no time to go fully into the consideration of this subject), of the members of the Convention to the fact that there is scarcely a section in the balance of the article that is not liable to the same objection: that it is not equal taxation; that quibbles can be made upon every single section that they do provide for unequal taxation; and therefore, to retain the language in there, in a certain sense, is stultifying themselves, as well as opening the door to boundless litigation and trouble in regard to the construction of the word.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: When this question was up before the Committee of the Whole we discussed it for days. I think a most elaborate discussion took place upon this amendment as now read at the Clerk's desk, namely, that taxation shall be equal and uniform throughout the State. That is the language of the old Constitution.

MR. MORELAND. I do not think we discussed this section more than half an hour. The gentleman was not here.

MR. ESTEE. I was here. I took part in the discussion. But if I was not here I do not see that it makes any point. Perhaps the gentleman from Sonoma will explain what effect it would have upon this section. Now, we have agreed upon this section in Committee of the Whole. We propose again in Convention to reform that section after this lengthy debate. My first impression is that there ought to be an end to these propositions, unless there is some new reason given for changing it. The old argument is being presented just as it was before, and I have been unable to see thus far in the discussion of the most of these subjects that emanated from the Committee of the Whole, or amendment proposed, any great improvement made in the Convention upon what was done in the Committee of the Whole. Therefore, I am in favor, unless there is a more marked objection, a more potent objection, to the section as reported by the Committee of the Whole, I am in favor of adopting the work of that committee, and not commencing again in the Convention to rehash the report of that committee. We will not improve it.

But I have another objection. I think taxation should be equal and uniform, and it matters not whether the statutes or the Constitution of any particular State requires taxation to be equal and uniform. It is the universal rule, so far as I have been able to observe in looking at the Constitutions of the different States, that taxation shall be equal and uniform. That is, that property shall be taxed alike everywhere, where it can be found.

MR. BARBOUR. What modern Constitution has that?

MR. ESTEE. Pennsylvania, Missouri, Illinois——

MR. BARBOUR. Neither one.

MR. ESTEE. Pennsylvania says that the same class of subjects shall be taxed equally. There they tax all horses alike. That is the way they do. They tax all cattle alike. They say that horses of the same kind are worth fifty dollars apiece, and every horse is worth fifty dollars. But I apprehend that the people of California do not want to adopt that rule. But the main proposition is that taxation shall be equal and uniform. That is, in my judgment, the only rational rule, that every man's dollar shall be taxed just alike. When you deviate from that rule you are drifting upon an unknown sea. You have no light by which you can be guided; you have no safe rule by which you can be guided; and therefore I believe that the section should remain as it is. And, although the gentleman from San Francisco has well said that you cannot find any instance where taxation is in all cases equal and uniform, yet you cannot find any instance where the people have declared that taxation shall be unequal. The intention everywhere is that taxation shall be equal, and if there is a failure in that regard it is a failure of the officer or of the law. It is certainly right. It commends itself to the most rational consideration of every decent man. It is the only rule by which we can safely be guided, that every dollar shall be taxed alike; and when, as I said before, you undertake to adopt any other rule, in my judgment you are adopting a very unsafe one. I do not think you can find an instance where it is laid down as a proposition of organic law, in any Constitution, that taxation shall be unequal; or that it shall not be equal. The object is that it shall be equal, and if there is a failure it is a failure either of the officers doing their duty, or it is a failure in the law.

I hope, therefore, that we will go on with this article and adopt it as reported by the Committee of the Whole. I agree, to a very large extent, with what the gentleman from San Francisco, Mr. Winans, has said. I believe it is safe to leave something of the old Constitution, and especially upon this question of taxation. The Courts, for thirty years, have been giving interpretation to the old Constitution. The bar and the bench and the people are familiar with the decisions of the Courts upon these questions. Let us not adopt new language where the old language will answer the purpose, and we will save the people a vast deal in the way of litigation. Let us adopt the old Constitution whenever and wherever it meets the interests of the people, and I think we will accomplish far more than we will by merely changing the verbiage so that new interpretations must be given to this Constitution. As regards this amendment, "equal" and "uniform" are synonomous terms, and declared so by the Supreme Court of this State, for the purposes of taxation.

MR. JOHNSON. Mr. President: I withdraw my amendment, and move to strike out section one.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: The gentleman from Sonoma has withdrawn his amendment, and I desire to offer one. This question that has just now been discussed here, it is true, was discussed for a very few minutes only in Committee of the Whole. I know that the action of the Chairman of the committee took me by surprise, and I supposed that if there was any single section in that article that the Chairman would stand by, it was the first section; yet the first motion he made was to strike that section out, and this one was passed with very little consideration. Now, gentlemen have portrayed faithfully the difficulties that have arisen under this language of the old Constitution—"equal and uniform." To declare that taxation shall be equal, is to declare that something shall be that never was and never will be. I have an amendment here which I would like to offer, and if an opportunity shall present itself, I shall hand this in:

"All property shall be taxed in proportion to its value, which value shall be ascertained as provided by law."

MR. JOHNSON. That is substantially in section two. It is only reaffirming what is in the subsequent section.

MR. DUDLEY. Well, I hope very strongly that section two will be remodeled. I do not know what there was in the article spoken of, that general laws should have a uniform bearing. It may preclude the necessity of this first section. Whether it would or not, I am not prepared to say; but I am prepared to say this, whilst I am up: that it is impossible ever to know the practical result of any new system of taxation until it has been tried; and if so, and you mark out any system and encase it in an iron casket—if I may be allowed to use the expression—there is a bare possibility that it may prove to be very radically defective in the course of time.

MR. BIGGS. Are you opposed to taxation being equal and uniform?

MR. DUDLEY. I do not consider the gentleman's question pertinent at all. I am in favor of equal taxation; but I am not in favor of declaring that taxation shall be equal, because it never has been and never will be. It should be left to the Legislature to find out the nearest system that is possible, without being restrained by the Constitution. The Legislature should have the privilege of saying that A, B, and C shall be assessed upon the value of their property, and if the rule will not apply to another business, or other people, they should have the privilege of designating some other rule. The Constitution should not stand in the way of it. Now, there is no system in the world under which so many powers are wanted as this.

MR. BELCHER. I would ask the gentleman if the difficulty has not been that the Constitution provided for the election of Assessors——

MR. DUDLEY. I do not understand that the decision in the Hibernia Bank case grew out of the fact that the Assessors were elected at all. I understand that they decided that taxation as prescribed by law was not equal, therefore it was unconstitutional and void. Now, the people, generally, all over California, have favored some change in that; and the gentleman himself, when the matter was under consideration in Committee of the Whole, admitted that the present system of taxation at the best was not equal and just, and that there ought to be some change somewhere. Now, I contend that the proper change to make is to put just as little into this article upon this matter as possible, and I would adopt this first section as I have read it, and would modify section two so as to provide that school property, etc., should be exempt from taxation, and I would leave that last section as adopted by the Committee of the Whole, and stop there; and then the whole thing would be in the hands of the Legislature, and if one system did not

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work equally and justly they can try another. It will be in the hands of the people, and the people will get justice and they will get equality. I would amend section two so as simply to provide for the exemption of school property, State property, etc., and there I would leave it.

MR. JOHNSON. I move to strike out section one as amended.

THE PRESIDENT. The question is on concurring with the Committee of the Whole.

MR. DUDLEY, of Solano. Mr. President: I send up my amendment.

THE SECRETARY read:

"Strike out all of section one and insert the following: 'All property shall be taxed in proportion to its value, which value shall be ascertained as provided by law.'"

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I was not present in the Committee of the Whole when this article was considered here before, and I do not know what range the debates took at that time, but the section as it stood reads: "Taxation shall be equal and uniform throughout the State." Now, to say that taxes shall be equal, what would we naturally understand by that? What is referred to? It refers either to individuals, or it refers to property, or to both. Now; which? The report of the Committee on Revenue and Taxation says:

"SEC. 2. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

Now that defines it. The report of the committee has sense in it. We understand what it means. If land is the subject it must be uniform as to land. If it is cattle, it must be uniform as to that. And any other property that you may name, when it comes to that subject of taxation it must be uniform. But if you say it must be equal and uniform as to all property, you must tax all property alike. You would crush some enterprises out of existence, because it would be onerous. You may tax some justly and some unjustly, and you will have no rule by which you can grade the taxation of the State so as to develop the natural resources of the country; and there is no State in the world that prospers to-day that undertakes to tax property and everything alike, because it crushes the manufactories out of existence. There is not a prosperous country to-day on the face of the earth but what discriminates in favor of that species of property which tends to the development of the natural resources of the country. Now, the most prosperous State to-day in manufactures is Pennsylvania—so far ahead of New York that New York cannot compete. Pennsylvania has this section which was presented by the Committee on Revenue and Taxation. She raises her revenue upon the revenues and incomes of corporations, etc., and does not tax manufactures. Take Belgium, England, France—take any country that has manufacturing interests—they never tax manufactures, because if they did they could not compete with other nations of the world. These things are to be considered when you talk about equality and uniformity of taxation. If it is equal upon all property it is not a judicious system. But the old Constitution does not say that. It says that taxation shall be equal and uniform throughout the State, without regard to anything. The committee says it shall be uniform upon the same class of subjects. Now in that case you might discriminate. Suppose that some capitalists should engage in a commercial enterprise and put on a line of steamers to trade with South America, or anything of that kind. You may say, give it a subsidy. The Government has given subsidies to our steamers. Why give a subsidy? Because they cannot compete with other nations. A subsidy was granted to a line of steamers between New York and Liverpool, because they could not compete with foreign nations. The subsidy was withdrawn and the steamers were withdrawn. Now equal taxation upon everything would destroy such an enterprise. If we leave this section as reported by the committee, we could tax uniformly upon the same class of subjects. I am in favor of striking the whole thing out and letting the section stand as originally reported by the Committee on Revenue and Taxation.

MR. WILSON, of First District. Do you declare for protection?

MR. HAGER. I am in favor of levying the taxation of our own State for the protection of our industries.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I am a little astonished at the argument of the gentleman from San Francisco. I think he is decidedly undemocratic, and he has gone over to the side of protection. Now, sir, what is the true rule of taxation? What was the true rule as demonstrated by Robert J. Walker? It was the ad valorem rule, and that is the rule of the gentleman from Solano, and the one I hope will prevail. It provides that all property shall be taxed in proportion to its value, which value shall be ascertained as provided by law, and the very moment you depart from that rule you get into confusion worse confounded. It is precisely the rule in this State under the present Constitution. Is there a single writer upon political economy to be found who does not assert the principle that property should be taxed in proportion to its value for the support of Government? That is the rule. Now, sir, the gentleman says that he would not tax a line of steamers that was subsidized. Well, sir, if a line of steamers subsidized by the Government cannot afford to pay taxes, we had better let them slide. They do not deserve to exist; they ought not to live. And you might just as well say, that because the railroads in this country have been subsidized by the Federal Government, that they ought not to be taxed.

MR. HAGER. I did not say that a line of steamers that was subsidized ought not to be taxed. I said that if they were not able to exist at all without a subsidy, why should we further burthen them down with taxation, if they had no subsidy at all?

MR. HOWARD. If they cannot exist without a subsidy, the sooner they go out of existence the better for them and for the country, especially if they have been subsidized to bring Chinamen here. I do not see any objection to this amendment of the gentleman from Solano. I do not see any other practical rule of taxation which we can adopt without getting into inextricable confusion.

MR. JOHNSON. Section two, as adopted by the Committee of the Whole, contains the same rule, does it not?

MR. HOWARD. As I understand it, we are now on section one. Section two may contain this proposition, but you clog it with this assertion in section one, that "taxation shall be equal and uniform."

MR. HAGER. I am in favor of concurring with the report of the committee.

MR. HOWARD. The report of the committee is pretty near as bad, that all taxation shall be uniform upon the same class of subjects. That is not quite so bad. That is much better than that adopted by the Committee of the Whole, but that is not as good as the amendment of the gentleman from Solano. It is not as clear in presenting a rule which is practical as the amendment of the gentleman from Solano; therefore I hope that his substitute will prevail.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. President: On this matter we had considerable discussion in the Committee on Revenue and Taxation, and I agree with the gentleman from Solano in the propriety of adopting this rule as expressed in his amendment, that all property shall be taxed in proportion to its value. When you get to that you get to the true rule of taxation, and all other provisions in respect to equality and uniformity of taxation become entirely unnecessary. If you tax all property according to its value, the taxes will of necessity then be equal and uniform, as far as it is possible to be equal and uniform. The simple assertion of that principle, or that rule of taxation, is, in my judgment, sufficient, without either of these expressions contained in section one.

MR. JOHNSON. If that same expression is in section two, already adopted by the Committee of the Whole, is there any necessity for section one?

MR. MILLER. I do not think there is. In section two this very rule is very clearly expressed. It goes on to speak of moneys, credits, etc., "and all other property, real and personal, according to its true value in money, except as hereafter provided." I do not know what the provisions are. That seems to me quite sufficient upon this subject, and I would leave these questions as to what is property, or what property consists of, to the interpretation of the Courts. I do not believe in fiat property any more than fiat money. I believe that in the formation of an organic law we should use such language as will be understood by the people. We use the term property. Everybody knows what that means. If we want to create fiat property, we can leave that to the Legislature. But the better way would be to leave to the Courts to declare what things are property. The value of property depends, in a great measure, on the uses to which it can be put. The gentleman from San Francisco, Mr. Hager, wishes to introduce the protective system, as of manufactures; that is, he would attempt to fix some arbitrary standard or rule in cases of some classes of property. If a man started a manufactory to make shoes, according to his views that property ought not to be taxed. But if we leave it to be taxed according to its value, then in ascertaining that value the income that may be derived from it may be taken into consideration in establishing the value. Take the property in a city. The value often is determined by the amount of rent that can be obtained from it. In the city of London all taxation is based upon rental value. In the country a piece of land is worth what can be made out of it. These things are all taken into consideration by the officers who have the power and whose duty it is to fix values. If they are intelligent they take into consideration the uses to which property can be put, and the amount of income that can be derived from it, in establishing its value. I do not care to say anything more upon this subject, but I concur with the gentlemen who are in favor of striking out this first section.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President. I regret that the Chairman of the committee himself is absent; but as one of the committee, I think it advisable to say something on this section. It seems to be forgotten that property is not the only subject of taxation in this State. Licenses are issued to trades, and industries are taxed in this State. How are you going to tax them, with a declaration that taxation shall be equal and uniform? They are left entirely out. The last part of section two provides for the taxation of property, and there is nothing said anywhere about the rule applied to these other articles, and there arises a necessity for the use of these words "equal and uniform."

MR. JOHNSON. Has not the Legislature the power to pass laws to tax property uniformly?

MR. SHAFTER. I have no doubt of it, but we have the right to direct them. They have the right, likewise, to fix licenses for the carrying on of certain trades or departments of industry, but they are not property, real or personal. How are you going to have them taxed equally and uniformly? But the Constitution should declare equality and uniformity, so that the Legislature would approach it as nearly as possible, otherwise you may have any inequality that the Legislature may see fit to establish. They may make them as unequal as they please. Mr. Barbour says that by and by it will be necessary for the Legislature to tax land just as they please, to have a graduated system of taxation—that is, a man's rate of taxation may be increased as his possession increases. The desire is to leave that power to the Legislature, so that it will have it to exercise in the future. Those of you that like it can adopt it. I do not. The local Assessors have assessed property as they pleased, and there has been no authority to equalize it. There has been

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all the trouble. The Legislature has laid down a rule which is unequal, and the Supreme Court has saved the people. Now, it is proposed that the Legislature should be allowed free scope to do what they please, though the Legislature has been found to pass improper and unjust legislation. It strikes me that is a very strong reason for retaining it, and making it operative too. It is said that it cannot be uniform. The amendment to section two proposes that property shall be taxed according to its true value in money. How are you going to find its true value in money? The Assessor has got to say what the value of it is, and he has got to assess it according to its true value in money. Is there not the same difficulty as is involved in the word "equality?" I insist that the word "equal" is not out of place in a system of taxation. If property is all assessed at its value it is equal. I think it is wiser to retain this system. It applies not only to property, but to these other matters which are not property. This assessment of the Assessor involves the same question for him to settle as it does to settle what is equal between man and man. They are identical, and to be consistent you ought to strike out the provision that the Assessors should assess property according to its value, and leave them unlimited discretion; and leave the Legislature unlimited power to do just as it pleases. Conceal it as you may, it is the intention of some gentlemen to secure that result, and leave it to the Legislature to assess some people out of existence.

MR. HOWARD. Is it not the best way to avoid that injustice, to assess property according to its value?

MR. SHAFTER. Of course, I want both provisions to stand. I want equality and uniformity to stand, and likewise the other provision. It is a mere change of phraseology. I hope that the Convention will stick to the amendment proposed by the Committee of the Whole.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I hope that the Convention will refuse to concur in the action of the Committee of the Whole. I believe that is the only manner in which the matter can be reached. I believe that the Chair holds that a motion to strike out would not be in order. I am not in favor of the amendment of the gentleman from Solano. I think that section two is all sufficient in relation to that matter. In relation to what took place in Committee of the Whole, I was sitting here all the time, and my recollection is, that this section was debated but a very short time in relation to the words "equal and uniform." The gentleman from Alameda, Judge Campbell, raised the question that the decision of the Hibernia Bank case was founded upon the words "equal and uniform." I do not know but what it was denied by the Chairman of the Committee on Revenue and Taxation, that that decision was based upon the words "equal and uniform." At any rate, some discussion took place between the gentleman from Alameda and the gentleman from Sacramento, in relation to the decision in that case, but the main discussion in relation to this matter was on section two. In the discussion of section two, it was brought forward here that section one, as adopted, was inconsistent with section two, as adopted by Committee of the Whole. Then it was that the question in relation to the words "equal and uniform," was fully discussed, and then it was that the gentleman from Sacramento, the Chairman of the Committee on Revenue and Taxation, insisted that section two, as finally adopted by the Committee of the Whole, was inconsistent with the words "equal and uniform," and opposed the adoption of section two, as the committee did adopt it, upon the ground that it was inconsistent with the words "equal and uniform;" therefore I consider, Mr. President, that section one is unnecessary, and that it is fully covered by other sections. We have certainly seen that one of the most mischievous decisions in relation to taxation, was based upon the words "equal and uniform." I am in hopes, therefore, that the Convention will refuse to adopt the amendment of the gentleman from Solano, and will refuse to concur in the amendment offered by the Committee of the Whole. That is the motion as I understand it.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: Section one was adopted in Committee of the Whole after very considerable discussion, and after several amendments had been proposed to it. The proposition now is, in spite of that discussion, to either strike out that section, and introduce some other in place of it, or, perhaps, to adopt the section as reported by the Committee on Revenue and Taxation. Now, in regard to the general proposition contained in section one, as taken from the old Constitution, that taxation shall be equal and uniform, I have heard no objection, save merely that it is an aspiration for something which, from the imperfection of human judgment, cannot be reached. But taxation ought to be equal; it ought to be uniform. There ought to be an arbitrary power upon the subject. The power of taxation, as has been well said by the judiciary of the United States, involves the power to destroy. The power of indiscriminate taxation—the power to impose a taxation which is not equal, and which is not uniform—involves the power to lay the hand of destruction upon one class of subjects in preference to another. But there is now pending an amendment which proposes to introduce in place of these words, other words from the old Constitution, in substance as follows: "All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law." Now, in relation to that amendment, I have to say that it is bringing into section one those matters which are considered in section two of the report, and which ought to be left for consideration in that section two. In the next place, it is introducing in the new Constitution, without limitation, these very identical words which have been construed by the Supreme Court, and given a meaning which a majority of this body does not desire them to retain. The difficulty that has been complained of does not arise from the provision that taxation shall be equal and uniform, but from the judicial definition given to the word property, in which the Supreme Court held that that word property did not involve choses in action. Therefore, the adoption of that amendment involves two things which this Convention does not desire: First, the adoption, without any other definition of the word property, which will be construed as adopted with the same definition which the Supreme Court has given it, and which would exclude all choses in action, and next, it would include within the word property the growing crops, which the Committee of the Whole did not desire taxed; therefore this amendment ought not to be adopted. If we bring a portion of section two back here and put it into section one it involves a necessary reconstruction of both sections one and two.

NOTICES.

MR. BROWN. I hereby give notice that on to-morrow I will move to reconsider the vote whereby section twenty-seven, of the report of the Committee of the Whole on legislative department, was adopted.

MR. ANDREWS. Mr. President: I give notice that on to-morrow I will move to reconsider the vote adopting article four, relative to legislative department.

ADJOURNMENT.

MR. RINGGOLD. Mr. President: I move we adjourn.

Carried, and at five o'clock and ten minutes P. M. the Convention stood adjourned.

ONE HUNDRED AND THIRTY-SECOND DAY.

SACRAMENTO, Thursday, February 6th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Edgerton,	Overton,
Barton,	Evey,	Porter,
Berry,	Fawcett,	Prouty,
Dean,	Finney,	Terry,
Dudley, of San Joaquin,	Graves,	Walker, of Marin.
Eagon,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Evey.

Leave of absence for three days was granted Mr. Dean.

THE JOURNAL.

MR. BROWN. I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

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REPORTS.

MR. AYERS, from the Committee on Reporting and Printing, reported correctly engrossed: Amendment No. 402—Preamble and Bill of Rights; Amendment No. 468—Executive Department; Amendment No. 445—Pardoning Power.

PETITIONS.

MR. MOFFAT presented a petition asking for the exemption from taxation of property used exclusively for educational, charitable, and church purposes.

Laid on the table, to be taken up with the article on revenue and taxation.

MR. WATERS presented a petition from eighty citizens of San Bernardino, praying for the same.

MR. REYNOLDS. I ask to have the petition, presented by the gentleman from San Bernardino, read.

THE SECRETARY read the petition down to the names, and then hesitated, as they were mostly Spanish names, difficult to pronounce.

MR. REYNOLDS. Read the names.

[Cries of "Read!" "Read!"]

MR. MANSFIELD. I did not understand the name of that cañon these people reside in.

MR. WATERS. Now, this is no laughing matter. [Laughter.] I know every man whose name is appended to that petition. They are electors of that county, and have been for the last twenty years and more. They settled there in eighteen hundred and forty-two. That is all I have got to say on the subject.

MR. REYNOLDS. I beg the gentleman's pardon. I meant no disrespect to his constituents when I asked that the petition be read; and now, if the Clerk is unable to read the names, I suppose that the gentleman himself can read them, and I respectfully ask that the names of the petitioners be read. I understand that he is acquainted with the handwriting of most of them, and with their names, no doubt.

MR. WATERS. I will read them, if it is desired by the Convention.

MR. AYERS. They are just as good names as if they were all "Smith."

MR. BARRY. I move that the reading of the names be dispensed with.

THE PRESIDENT. The petition will lie on the table under the rule.

MR. CROSS. Mr. President: I wish to send up a petition, and make two or three remarks in connection therewith. I have to say that it is a petition signed by eighty citizens of Nevada County, asking for the exemption of church property from taxation. I know all of the signatures and all of the men, except one or two. They are all taxpayers, and some of them heavy taxpayers. About two thirds of them are directly interested in the welfare of churches, and represent the various denominations. They represent the Catholic, and they represent the Methodist church; they represent the Congregational church; they represent the Episcopalian church; and they represent the Jewish denomination or creed of religion. There have been so many aspersions cast upon these different petitions, that I feel like saying that the signatures upon this one, from first to last, are genuine.

MR. HILBORN. I understand these petitioners are interested. We last night resolved that no persons interested——

MR. CROSS. I object to such interruptions. The right of petition belongs to everybody.

MR. GORMAN. Suppose they are Spaniards who cannot write English?

MR. CROSS. Every citizen is entitled to respect. I wish to say that about three fourths of the persons whose names appear on this petition are not interested nor connected with any church or religious society whatever. Now, sir, I may not in all respects agree with the men who present this petition, but I deem it my duty to these men to see that they have a fair representation. It is signed by eighty citizens and taxpayers, and they have a right to send in their petitions.

THE PRESIDENT. The petition will lie on the table.

MR. TINNIN. Mr. President: I present a petition from twenty-nine residents of Trinity County, asking for the exemption of church property from taxation.

THE PRESIDENT. It will lie on the table.

MR. KEYES. I present a petition to the same effect.

THE PRESIDENT. The same order.

RESOLUTION.

MR. LARKIN. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the Committee on Revision and Adjustment shall be composed of fifteen members, and that the President is directed to fill all vacancies.

MR. LARKIN. Mr. President: The Committee on Revision and Adjustment now consists of nine members, and a majority of the members are present now for the first time for a number of days. It is very essential to the work of the Convention that that committee be composed of a sufficient number of men familiar with the work of the Convention, in order to revise and adjust the whole work of this Convention. I ask the adoption of this resolution in the interest of the Convention. I do not desire to be on the committee, but to see such gentlemen appointed as are proper men to go on and do the work of that committee. I hope the resolution will be adopted, and I believe it is important.

THE PRESIDENT. The resolution will lie over one day under the rule.

MR. LARKIN. I ask unanimous consent that it be adopted this morning.

THE PRESIDENT. If there be no objection the resolution will be taken up by the unanimous consent of the Convention. The Chair hears no objection. The question is on the adoption of the resolution.

AMENDMENT TO RULE.

The resolution was unanimously adopted.

MR. McCALLUM. Mr. President: Pursuant to notice I send up a motion.

THE SECRETARY read:

"I move to amend Rule Thirty-five by adding thereto as follows: 'But when an article of the Constitution is being considered in Convention, the main question shall only apply to the section then under consideration and the amendments to such section.'"

MR. McCALLUM. Mr. President: I gave notice of that on yesterday. I am sure, if the Convention has given attention to this matter and know what particular matter is to be voted upon, it will be unwholly unnecessary to enter into any discussion. We have been compelled here again and again to hear one section discussed and considered at a much greater length than desired, and could not call the previous question because it would reach the whole article. I propose to take a vote upon it without discussion. I believe the Convention is prepared to adopt it.

MR. McFARLAND. Mr. President: I hope that this amendment will not be adopted, and for this reason: Now, this is the final action of this body upon all the articles before it. If that rule is adopted, the first gentlemen who get in a couple of amendments, and their friends, will have the power to preclude any other amendment offered. That was done a number of times in Committee of the Whole. I know there were gentlemen here who desired to offer amendments of considerable importance who were cut off by the previous question. For instance, when the second section of the article at present under consideration is taken up, there will be a half dozen gentlemen up here with amendments. The first two that are recognized will shut off other amendments, and the balance of the Convention will be compelled to vote down amendments that do not suit them, and if the previous question is ordered it will be impossible to get amendments before this body which would be satisfactory.

MR. SCHELL. Mr. President: I sincerely trust that the amendment moved by the gentleman from Alameda will be adopted. I have not been one who has desired to cut off debate generally upon pending propositions, but the debate which has taken place here since these articles were taken up in Convention, has convinced me that very little good can result from a renewed discussion of the propositions that are raised upon the articles or sections as proposed here. The argument, especially on yesterday, convinced me that it is but a rehash of the same arguments which were presented to this Convention sitting as the Committee of the Whole, and for one I am tired of it.

MR. McFARLAND. Does it apply to the section, or to the amendments alone? If it goes to the section I am opposed to it.

MR. SCHELL. I do not care which it is. I propose to vote for the amendment any way, and for the simple reason, that unless we adopt this rule we will never get through business here. I do not wish to sit here and hear members make the same identical arguments that they made in Committee of the Whole.

MR. GRACE. I desire to amend the amendment by saying, that it shall only apply to the amendments, and not the section.

MR. McCALLUM. Mr. President: I wish to correct my amendment by adding the two words, "then pending."

MR. GRACE. Mr. President: There is one thing about this previous question. I was out of in Committee of the Whole, and I do not think it was right. Every man ought to be allowed to speak to his amendment five minutes.

MR. AYERS. I want to go home.

["Leave." "Leave."]

MR. AYERS. I think that is all the speech that is required to recommend the adoption of the amendment to the rule.

MR. MILLS. Mr. President: I am not in favor of this amendment, for it is certain that many gentlemen sitting in the front part of the house can be seen and heard upon every occasion. They undoubtedly have debated this as much as they desire. Other gentlemen sitting far back cannot be heard, and they may not be seen—at all events they have not been seen in this Convention. Now, if the object is to shut off debate, if it was applied to those gentlemen who are so much in favor of it, and who have done all the talking, I would be in favor of it; but as to others I am not. It is impossible for us in this portion of the house to be heard at all. The Chair recognizes those who are in the more favored portions of the hall, and can be more readily recognized. We have not been heard at all on this floor, hence I am opposed to it.

MR. TINNIN. I would propose to add to the amendment: "and other amendments may be offered to the section." I think that would cure the evil.

THE PRESIDENT. The Secretary will read the section as modified.

THE SECRETARY read:

"I move to amend Rule Thirty-five by adding thereto as follows: 'but when an article of the Constitution is being considered in Convention, the main question shall only apply to the section then under consideration and the amendments to such section then pending.'"

The amendment was adopted, on a division, by a vote of 83 ayes to 33 noes.

LEGISLATIVE DEPARTMENT.

MR. ESTEE. Mr. President: Pursuant to notice given by Mr. Wickes, I move to reconsider the vote by which the section introduced by Mr. O'Sullivan was adopted, and the article on Legislative department was ordered to a second reading.

MR. GRACE. I rise to a point of order. The gentleman did not vote in the affirmative. He rose and had his vote changed from aye to no.

MR. ESTEE. I understand that. The notice was given by Mr. Wickes.

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THE PRESIDENT. I understand the gentleman to be making the motion on behalf of Mr. Wickes.

MR. ESTEE. Mr. President: I only wish to say this, that I make this motion with a view only of perfecting the section. The last part of the section says: "Any Act passed by the Legislature, the passage of which can be proved to have been influenced by personal solicitation of members, or on the part of any person or persons interested in the same, shall be void." If that remain, there would be no such thing as an Act of the Legislature that would be permanent law to the State. It would be impossible, from the fact that if a large number of people were interested in destroying law, the only thing they would have to do would be to get some person by whom they could prove that some vote had been obtained for the Act by personal solicitation. I think it would be contrary to every principle of public policy and every principle of wise legislation to put such a clause as that in the Constitution. I therefore hope that it will be reconsidered for that purpose only.

MR. O'SULLIVAN. Mr. President: I hope that the section will not be reconsidered at present, but when it comes up for a second reading I am ready and willing to propose an amendment to that last sentence of the section which seems objectionable to some gentlemen here. I shall move an amendment at the second reading, to strike out the words "influenced by personal solicitation," and to substitute "procured by bribery and corruption." I think that would be acceptable. I will move that at the second reading, and I do not see the necessity of reconsidering the matter now.

MR. BARBOUR. Mr. President: I hope the motion to reconsider will not prevail, for this reason: that whatever is required to be done can be done on its second reading. Now the section as it stands is imperfect. There is no doubt about that. It is necessary that it should be more complete if we attempt any thing of the kind. For instance, I should like a provision inserted right there that in criminal prosecutions under the section the party may be compelled to testify. Therefore I move to lay the motion to reconsider on the table.

MR. HOWARD. Let us have the ayes and noes on that. This section as it stands now is a reproach to this body.

The ayes and noes were also demanded by Messrs. Brown, Dudley of Solano, Smith of San Francisco, and White.

The roll was called, and the motion to lay on the table lost by the following vote:

AYES.

Ayers,	Freud,	Reynolds,
Barbour,	Gorman,	Schomp,
Barry,	Harrison,	Smith, of 4th District,
Beerstecher,	Herold,	Smith, of San Francisco,
Bell,	Joyce,	Sweasey,
Condon,	Kenny,	Swenson,
Cross,	Kleine,	Tuttle,
Crouch,	Lindow,	West,
Davis,	McCoy,	Wickes,
Dowling,	Nelson,	White,
Doyle,	Neunaber,	Wilson, of 1st District,
Farrell,	O'Sullivan,	Wyatt—36.

NOES.

Andrews,	Howard, of Mariposa,	Pulliam,
Belcher,	Huestis,	Reddy,
Biggs,	Hughey,	Rhodes,
Blackmer,	Hunter,	Reed,
Boggs,	Inman,	Ringgold,
Boucher,	Johnson,	Rolfe,
Brown,	Jones,	Schell,
Burt,	Kelley,	Shafter,
Campbell,	Keyes,	Shoemaker,
Caples,	Laine,	Shurtleff,
Casserly,	Lampson,	Smith, of Santa Clara,
Chapman,	Larkin,	Soule,
Charles,	Larue,	Stedman,
Cowden,	Lavigne,	Steele,
Dudley, of Solano,	Lewis,	Stevenson,
Dunlap,	Mansfield,	Stuart,
Estee,	Martin, of Alameda,	Swing,
Estey,	Martin, of Santa Cruz,	Thompson,
Filcher,	McCallum,	Tinnin,
Freeman,	McComas,	Townsend,
Garvey,	McConnell,	Tully,
Glascock,	McFarland,	Turner,
Grace,	McNutt,	Vacquerel,
Gregg,	Miller,	Van Dyke,
Hager,	Mills,	Van Voorhies,
Hale,	Moffat,	Walker, of Tuolumne,
Hall,	Moreland,	Waters,
Harvey,	Morse,	Webster,
Heiskell,	Murphy,	Weller,
Herrington,	Nason,	Wellin,
Hilborn,	Noel,	Wilson, of Tehama,
Hitchcock,	O'Donnell,	Winans,
Holmes,	Ohleyer,	Mr. President—100.
Howard, of Los Angeles,		

THE PRESIDENT. The question recurs on the motion made by the gentleman from San Francisco, Mr. Estee, to reconsider the vote by which the Convention ordered the article on legislative department read a second time.

MR. STEDMAN. Mr. President: I do not desire to detain this Convention. I am thoroughly in favor of restricting lobbying in the halls of our Legislature, but I voted against this proposition yesterday, because it contained these words, "influenced by personal solicitation." I merely rose to explain my vote on that occasion. It was not a vote against lobbying, but if it is so reconstructed, and Mr. O'Sullivan offers the amendment which he proposes to, then I will be happy to give him my support.

MR. McCALLUM. Mr. President: I desire to say this, merely as a personal matter, because it is unnecessary to discuss this matter. It is evident that the Convention made a mistake yesterday. In the confusion I did not understand the language of this section, and voted for it under a misapprehension. Not only the clause which has been pointed out, but the whole section—if it is proposed to legislate upon the subject at all—ought to be reconstructed. I believe, that if it stands, without being reconstructed, it will be a reproach to the intelligence of the Convention.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. President: I hope that the motion to reconsider will not prevail. If I may be allowed to use an historic expression, I would say to the majority here, "Stand to your guns!" I did not happen to be here yesterday, but I believe a large majority of the Convention voted for this section. Now, sir, it would seem to me that it would look like boy's play to reconsider it to-day. Let it soak a little while any way. Lay it away on the table, or somewhere, for a week or two, and then we can quietly take it up and it won't be noticed so much, but if we go and reconsider right the next day, it seems to me that it would bring us into ridicule with the people. I hope that it won't be passed on to-day. There is another reason why I am opposed to reconsidering it. Now, sir, we have been legislating here in favor of nearly every other class of the community but one; we have done something for nearly everybody except one large and respectable class of intelligent gentlemen in this State—I speak of the fraternity of lawyers. This is almost the only thing that seems to have been passed in their interest, and for that reason, it ought to be allowed to stand. Now, it seems to me that the pith of the whole matter is right here. What difference does it make to a man who gets a bad law passed through the Legislature in his interest, that somebody else is convicted of felony and sent to the penitentiary? He has got his money, he receives all the benefits, and some poor devil who has been solicited or been approached, goes to the penitentiary. Now, the way is to reach the man who is getting the benefit, and the only way to do that is to declare the legislation void, and then the man don't get the benefit of the fraudulent legislation. For all these reasons, I hope that the motion to reconsider will not prevail.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: Now, I must say that I differ with the gentleman, upon the very ground of his own reasoning. It appears to me that if any body of men become convinced of having done wrong they should correct the same immediately, and not let the matter lay in soak for a few days, or a month or two. The sooner such a correction is made the better. It is an excellent thing to say, "Stand by your guns!" I have heard that saying attributed to several men. It is excellent in its force, but if you have your gun directed in the wrong way it is not necessary that you should stand by it. [Laughter.] That is the trouble with the gentleman from Sacramento. I believe it is evident to the members of this Convention that there has been a mistake committed, and I am under the impression the sooner such a mistake is rectified the better. If I wished something to stigmatize this body I would say, perpetrate the error; perpetrate something that is wrong, something that is inconsistent. But if I wished this body to stand fair in this community, and its great work to be appreciated and indorsed by the people of this State, I would say, make changes immediately where an error has occurred.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: My friend from Sacramento is rather facetious in his remarks. We have not done much for the lawyers. I believe there are sixty-two candidates for judicial positions, and we have not provided quite enough to go round. Now, the reason this motion should prevail is this: A majority of this report is in accordance with the sentiments of a majority of this body, but the last sentence of this section is not. To have stricken that out was impossible at the time of the vote. If that section had been in force for the last twenty-five years some lawyers would have been where they deserve to be now, in the penitentiary. The part I am opposed to is the last clause of the section. That proposition is wrong, because it would affect innocent parties. I refer to the records of the Legislature of this State to prove that there are certain attorneys—not the better class of attorneys, but there are men claiming to be attorneys, that have come here—that have been the tools of private interests to advocate their measures; and you will find that the subsidies of this State, that the one hundred and five thousand dollars a year we are paying to the Central Pacific Railroad, was introduced by a man who has been a Supreme Judge, and to-day is receiving a reward as the attorney of the corporations.

MR. TOWNSEND. Can you name him?

MR. LARKIN. It is not necessary. You know him. I do not say that they are any better or any worse than other men, but they come here as attorneys for private interests, and they should not be recognized as pure because they belong to an honorable profession. Lawyers ought to be as ready to cast them out, and not stand by them, as any one. I say, the first provision of that section is right. I do not care whether it be a lawyer or a farmer, the man who is guilty of that offense ought to be denounced by the people of this State; and the quicker the lawyers denounce that class of lawyers, the better for them. I hope this will be reconsidered, and that we will strike out the last clause.

Messrs. Huestis, West, Inman, Hitchcock, and Ohleyer demanded the previous question, which was ordered by the Convention.

The motion to reconsider prevailed.

MR. CAMPBELL. Mr. President: I move to strike out the entire section.

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THE PRESIDENT. The motion is not in order. The latter cannot be got at without moving to reconsider the vote by which the section was adopted.

MR. HUESTIS. Mr President: I move to reconsider the vote by which the Convention adopted the section proposed by Mr. O'Sullivan.

MR. HERRINGTON. Mr. President: I presume this Convention had better understand first whether they can amend that or not. When this question was voted upon, it was voted upon under the previous question, and it carried the whole article. We changed the rule this morning, and the change of the rule does not affect what has already been done by this Convention.

THE PRESIDENT. The previous question exhausted itself on the engrossment. There is no previous question on now.

MR. HERRINGTON. Very well; then I am in favor of a reconsideration.

MR. WEST. Mr. President: I was not in the Convention when it voted upon this section, but had I been here, I should certainly have voted for it. I hope that the vote by which it was adopted will not be reconsidered. I hope it will be continued as a part of the Constitution.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: The trouble is this, that every thing of that kind, except the last clause, which everybody conceives to be a wrong, is already provided for by the law of the State. It is in the Codes now, and if the gentleman will permit me I will read the section:

"Every person who gives or offers a bribe to any officer or member of any legislative caucus, political convention, committee, primary election, or political gathering of any kind, held for the purpose of nominating candidates for offices of honor, trust, or profit, in this State, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another, and every person, member of either of the bodies in this section mentioned, who receives or offers to receive any such bribe, is punishable by imprisonment in the State Prison not less than one or more than fourteen years.

"Every member of the Legislature convicted of any crime defined in this chapter, in addition to the punishment prescribed, forfeits his office, and is forever disqualified from holding any office in this State."

The whole thing is fully provided for in the statute now—more fully, a great deal, than in this amendment.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I have remarked that I was not in the Convention when this section was presented. Now, sir, after having read the section, and more maturely considered it, I am still more convinced that this Convention should retain this section in the Constitution. The law, as passed by the Legislature, has been a dead letter. It has permitted lobbying to continue here in the Legislature of this State; lobbying, too, in the most disgraceful sense—in a criminal sense. Lobbying has been carried on in this Convention to a degree that is very disreputable, to say the least. Every gentleman knows that while most of his constituents are at home attending to their respective business, some gentleman, with some particular interest, can come here, and, by a certain influence which perhaps is not on its face of that criminal character which would indict him before a Court, control and affect the judgment of the members of a Convention or of the Legislature. I am in favor of making this criminal in our organic law. I am in favor of stamping upon it the brand of infamy in our organic law. I am in favor of saying to those barnacles of legislation that they should keep without the bar and without the hall; and whatever influence they wish to bring to bear upon the Legislature, let them do it by the right of petition, which is open to all alike. The petitions being published in the papers, become public, and all may become acquainted with the things that may be brought before the members of the Legislature to influence their votes. Now, I am in favor of the section just as it was adopted. I am not in favor of taking from it or adding to it. I think we should leave well enough alone. I do not believe that the last clause is improper, or would lead to any misunderstandings. I hope that it will be left just where it is.

MR. HOWARD, of Los Angeles. Mr. President: My colleague certainly does not understand the effect of this latter clause. Suppose his constituents sent up here a petition for a particular Act of the Legislature, and that Act was passed. Under this clause it would be void, because it had been solicited by a petition. Now, he certainly does not propose to maintain that kind of law. Nothing could be a greater stultification, or a greater piece of stupidity. I am in favor of this section when the latter clause is stricken out.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: The only objection to the first portion of the section is that it is code law. It is the law of the land to-day, and if it were not, any Legislature would enact a similar law. But the last clause of the section reads as follows: "Any Act passed by the Legislature, the passage of which can be proved to have been influenced by personal solicitation of members, or on the part of any person or persons interested in the same, shall be void." That clause, Mr. President, if included in the fundamental law of the State, or even the passage of it here yesterday, subjects this Convention to the ridicule and contempt of every man of intelligence—no, I would say of every school boy on the American continent. Can it be a fact that I must, on every occasion, differ with my friend and colleague, Judge McFarland? He seems to think that this is in the interest of lawyers, or against the lawyers. It seems to me that the only effect it would have is to abolish all law, because it would be utterly impossible for any law to stand the tests of the Courts under this provision. Every measure pending before the Legislature has friends and foes. They come here, gentlemen who are interested on either side of a question, and consult with their representatives, which it is their right to do; but this clause of the section would exclude them from doing so. The gentleman from Los Angeles has aptly said, it would cut off the right of petition. No gentleman would be permitted to come to Sacramento and consult with his representative in regard to the expediency or desirability of a measure under consideration. A representative would be practically isolated and cut off from his constituency. They would be deprived of the right of consultation with him, and they would be left utterly without the means of instructing their representative in their desires in regard to a measure pending. Surely, Mr. President, no gentleman can, or probably does, desire such a state of things as that.

MR. WEST. It does not mean petition at all, it says by personal solicitation.

MR. CAPLES. I myself have often come here to consult with our delegation in regard to the advisability of pending measures, certainly not corruptly. In some instances I believed that the pending measure was injurious to the public good, and I felt it to be my duty as a citizen, having an interest in common with others, to oppose it, and I used all the argument that I could bring to bear; sometimes against a proposition, sometimes in favor of it. Was I committing a crime? If I was, surely I must be very ignorant of right and wrong. I thought I was performing a duty that I owed to myself and to the public. I was using my best judgment, not for any personal ends, but for the public good. Was it right? Let the gentleman from Los Angeles, or anybody else, say that I did a wrong in using what influence I might happen to have in favor of what I believed to be for the public good. I am amazed, Mr. President, utterly amazed, that any man, old or young, great or small, wise or ignorant, should be in favor of a proposition so utterly at war with the very principle upon which our government is founded, which is the principle of representation, the principle that the people have a right to petition, to remonstrate, to instruct, and to advise with their representatives.

MR. LARKIN. Are you in favor of the first two sentences?

MR. CAPLES. I am in favor of them, but there is no need of them. They are in the Codes. I only object to the last.

MR. TINNIN. Cannot the Legislature at any time repeal the statute?

MR. CAPLES. Certainly; but the presumption is that the Legislature never would repeal a law of that kind. I have no conception of such degradation in the Legislature that would repeal a law that was inflicting a righteous penalty. California has never been cursed with such a Legislature, and never will be, whether there be a constitutional provision in regard to it or not.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: I am in favor of reconsidering the vote by which the section which I proposed was adopted, and if the Convention votes to reconsider, I shall then move to amend by striking out all after the word "trust," in the eighth line, as printed in the Journal. Now, in reply to the gentleman from Alameda, Mr. Campbell, and I believe Dr. Caples also said so, that the statutes of California already provided for this matter. I do not think they do provide for the first clause: "Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony." I do not think that is in the statutes. What I aim at, Mr. President, is to put down this infernal lobbying. It has been introduced here, even on the floor of this Convention, and I think we ought to punish it as a felony.

MR. WELLIN. Mr. President: I hope the motion to reconsider will pass, and that we will strike off that portion which Mr. O'Sullivan proposes. I shall vote for the section then. I hope the Convention will reconsider.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: This question seems to be misunderstood by gentlemen who are anxious to have the matter left to the Legislature to provide for. The statutes are aimed at the offense of bribery, and among all the offenses comprehended in that term is lobbying. But these statutes are a dead letter, and always will be, unless you first open the door to prove the offense, which can only be done in the Constitution. Now, the section is imperfect. The section is no improvement on the Penal Code as it stands. Of course the latter part of the section after the word "trust," which provides for invalidating a law because some influence may have been exercised, ought to be dropped out. But the section ought to contain a proviso that in all these criminal prosecutions the witness shall be compelled to testify, and shall not withhold the testimony on the ground that it criminates himself. Compel him to do so—with a further proviso that it shall not be used afterwards in a judicial proceeding—and authorize him to be punished for contempt if he refuses, as in other cases. Take a case right here. Suppose the Fireman's Association of San Francisco raise a fund to influence legislation referring to the fire ordinances of that city. It may be a corrupt fund raised and put in the hands of some man for that purpose. I would take that man and put him on the stand and make him testify what he did with that money, and if he did not do it I would put him in jail for contempt of Court. That is what I would do. Of course, as the bill of rights now stands, you could not do it, because it provides that you cannot make a man testify against himself. I want to offer an amendment which is almost identical with a proviso in the Constitution of Pennsylvania, which is that any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery, or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; and that such testimony shall not

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afterwards be used against him. Therefore, I hope the motion to reconsider will prevail, so that it can be made of some use.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope the motion to reconsider will prevail, and without consuming any time I will send up an amendment which I propose, for the information of the Convention, to show the necessity of reconsidering the vote, and that I may offer this amendment to perfect the section. I will read the amendment I propose to add to the section as it now stands:

"Any section of this Constitution, or any provision of any section thereof, of which it can be proved that any vote was cast in the affirmative by any member of this Convention who was influenced by or solicited by any person or persons, whether interested in the passage of said section or provision or not, shall be void, notwithstanding any vote of adoption of the whole Constitution by the people; and this provision shall be binding upon all Courts and in all judicial proceedings in this State."

I do not know but it will conflict with section twenty-two, but if it does you will fix it so that it won't. We are making dives at the Legislature on all hands, and assuming a great deal of virtue to ourselves. I suppose that no doubt we are the anointed of the Lord, and I have discovered by a brief career that holiness is given always to the anointed. Now we are seeking to strike at the lobby in the Legislature, and propose to squelch it; to fine members who are accused of bribery and send them to the penitentiary, and then hang them without benefit of clergy. Now if we are going to cinch the Legislature in this way, let us provide for cinching ourselves, so that we can go before the people with clean hands. When the article on corporations was up we had a lobby here, and there was great indignation about that lobby and great fear that the Convention was influenced, and that the rights of the people would be invaded thereby. Now, sir, let us strike at the other lobby. Of course there will be no lobby on the church question. I do not suppose there will be any lobby for the purpose of getting any church exemptions here, or anything of that sort. But then I want to put this provision into the Constitution to show that there was none. [Laughter.] I want the people to understand that this was a pure body; that there was no influence brought to bear upon any member; that no member was solicited to vote for any provision for endowing the sectarian schools, or anything of that sort; nor any exemption of churches from taxation; nor for exempting railroads from taxation. Why, suppose that a provision should slip in here in favor of the railroads, and it should be charged that it was done by influence. Why, we cannot afford to go before the people with this Constitution and with the provision of the gentleman from San Francisco in it against the Legislature, and not adopt this which will apply to ourselves. We must do it in order to be consistent.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I presented four or five petitions here the other day to exempt certain classes of property. They were accompanied by a letter from a Methodist minister, calling my attention to them, and asking me to give him my aid. He had the right to send the petition, but under this section, if he writes a letter to a member he must be sent to the State Prison, because it is personal solicitation. Now, what are you going to do with the section? How is it going to be proved? To whom is it going to be proved? What is the kind of testimony? Why an Act of the Legislature or the Code must prescribe the means? If it is determined that there has been personal solicitation in the passage of a law, then it is no law at all, although it has gone through all the forms and been signed by the Governor. But the Supreme Court have held that you cannot go behind that. You will have to go to work and establish a new rule. Cannot any gentleman see at once that it is impossible. These crimes ought to be prevented, it is true, but the Code already provides for it. This latter part of the section is certainly senseless, and none of it is as good as the law at present.

MR. TULLY. Mr. President: I apprehend there is not much controversy about the propriety of reconsidering this proposition, but I have been somewhat astonished at the position taken by my friend from San Francisco, Mr. Reynolds, and I thought that he had received absolution for his sins yesterday. The indications were yesterday morning that he was confessing in the lobby. I am told that after he had gone on about an hour making his statement, that the good father said to him in all kindness: "My son, it is unnecessary for you to proceed further; you can never get there. The church can never take you in."

MR. REYNOLDS. I had not money enough.

MR. TULLY. I have no doubt but what it would be a good thing for you.

MR. REYNOLDS. I could not pay cash, and he would not take scrip. I could have got there easy enough if I could have paid scrip.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: We have never had a fair vote upon this proposition. The reason why we have not had a fair vote is that this section involves two distinct propositions. One is that bribery and intimidation shall be punished, and the other is, that a law, the passage of which has been improperly influenced, shall be void. These are two distinct propositions. Many members of this ouse hdesired to call for a division of the question before the vote. It was a proposition clearly divisible, as it contained two distinct propositions. The vote was 60 ayes to 58 noes. I was one of those who did not vote at all. There was one proposition which I favored, and one which I did not. I, with four others, stood upon the floor and demanded a division of the question. Now, a rule of the house provides that a question shall be divided at the request of any member. The Chair probably misunderstood the proposition, and supposing that a division of the house was called rapped us to our seats. When again we tried to demand a division of the quest.on no such division was allowed.

I wish to say that the former part of the section I am decidedly in favor of. That part of the section does not say that a man may not give information, it says that a person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be subject to punishment. Now, sir, if that is not a wholesome provision I do not know what is. It goes on to say that any man who is corrupted by any such means shall be ineligible to any office thereafter. Now, sir, the gentleman from Alameda says that our Penal Code provides for all these matters. Granted. But the gentleman must know that the next session of the Legislature may repeal that law. I say that it is a proper provision for the Constitution, for the reason that it provides the means by which a person may be disfranchised—the means by which a person may be disqualified from holding a legislative office; it is therefore a proper provision for the Constitution, and should not be left to the Legislature to determine. As to the latter clause, I am in favor of it, with some slight amendment. Mr. O'Sullivan's is an amendment which is a very reasonable one. I am not in favor of it in the condition in which it now is. I hope we shall have a chance to put ourselves fairly and squarely upon this question, in its proper shape.

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

Seconded by Messrs. Van Voorhies, Ohleyer, Doyle, and Andrews.

The main question was ordered.

THE PRESIDENT. The question is on the motion to reconsider.

The motion prevailed.

MR. O'SULLIVAN. Mr. President: I ask leave to amend the section by striking out all after the word "trust," in the eighth line. That will strike out the words, "Any Act passed by the Legislature, the passage of which can be proved to have been influenced by personal solicitation of members, or on the part of any person or persons interested in the same, shall be void."

THE PRESIDENT. If there be no objections the gentleman will have leave. The Secretary will read the section as it stands now.

THE SECRETARY read:

"SEC. —. Any person who seeks to influence the vote of a member of the Legislature, by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony, and it shall be the duty of the Legislature to provide by law for the punishment of this crime. Any member of the Legislature, proven to have been influenced in his vote or action upon any matter pending before the Legislature, by any reward, or promise of future reward, shall be guilty of a felony, and, upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised, and forever disqualified from holding any office of public trust."

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: The substance of the section, as drawn up by me, I took from a series of propositions made in the last Constitutional Convention of Pennsylvania, by the Honorable Jere Black, one of the most eminent of living American statesmen, a gentleman, I believe, who is respected by all who know his reputation. I have not given his exact words, but as I found it as published in the Bulletin, some months ago, and they probably did not give the exact words. The objectionable clause which I have now stricken out was part of Mr. Black's proposition, so that I got it from an eminent source. The substance of the section has been adopted in the Pennsylvania Constitution. And I believe lobbying is punishable as a crime in the State of Georgia, and in other States. What I am at is to make lobbying, bribery, and corruption, which is notorious in the halls of legislation, punishable as a crime. I have seen it, myself, for I was here all last Winter, working in the State Printing Office, and I had leisure during the day to come here and attend the sessions, and I saw the most infamous, low-browed wretches, ignorant as hogs, or dogs, who ought to be in State Prison, making thousands of dollars by selling the votes of members that they never spoke to; and if men did not vote to suit them, why, they could not get a vote in the future from the conventions controlled by these wretches. I hope the section, as I now propose to amend it, will receive the indorsement of the Convention.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: All that I have to say to this portion of the section is simply this: that it is already provided for by law in as ample a manner, and probably in a more full manner than this section provides. Now, this section attaches no penalty, but the law as it stands does. The section we have proposed to insert in the Constitution is infinitely more weak than the section as it stands in the statute. This imposes no penalty, and the law does. In other respects they are identical. But, says the gentleman from Nevada, the Legislature may repeal that law, and therefore we must put it in the Constitution. So, sir, the Legislature may repeal the law against murder, or arson, or robbery, and it is just as likely to do so as it is to repeal these sections of the Code which punish the offense of bribery. I would like to know what member of the Legislature would rise in his seat and offer to strike from the Penal Code the enactments which punish bribery? Why, he would be just as likely to offer to strike from the Penal Code the provisions which punish murder, or any other offense. But this would be a different law, if the suggestion of the gentleman from San Francisco, Mr. Barbour, was carried out, by attaching to it an amendment providing that all the parties should be witnesses, and that their testimony may be taken, notwithstanding they may be guilty parties, but shall not be used against those who give it. That would have some vital force and effect. That is not now in the statute, and with that amendment, I would cheerfully vote for the section.

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MR. BARBOUR. As soon as I get an opportunity I will offer that amendment.

MR. CAMPBELL. But as it stands now it is not half as good as the statute.

MR. MURPHY. I move the previous question.

MR. LARKIN. The gentleman desires to offer a further amendment.

MR. MURPHY. I withdraw.

MR. BARBOUR. Mr. President: I send up my amendment.

THE SECRETARY read:

"Add to section the following: 'Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action as a member of the Legislature by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.'"

MR. BARBOUR. Mr. President: I offer that amendment, and the reason and necessity for it must be so apparent that I will only say a word or two. Bribery and corruption or corrupt solicitation is never proven, and the reason is plain that it must be proven out of the mouths of those who have been themselves connected in some way with it. They can decline to answer, on the ground that it would criminate themselves. Now, the present bill of rights prevents the use of that testimony, and a statute containing that proviso, in the absence of the constitutional provision that they shall be brought up and used as witnesses, and that their testimony should not be used against them, might be claimed to be void, because in conflict with the bill of rights. But if we insert in the Constitution a proviso that the testimony of these accomplices shall be used, and that they shall not be allowed to withhold it, we might, at least once in awhile, convict a guilty party, and nothing else will.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Barbour.

The amendment was adopted.

MR. REYNOLDS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Any section of this Constitution, or any provision of any section thereof, of which it can be proved that any vote was cast in the affirmative by any member of this Convention who was influenced by or solicited by any person or persons, whether interested in the passage of said section or provision or not, shall be void, notwithstanding any vote of adoption of the whole Constitution by the people; and this provision shall be binding upon all Courts and in all judicial proceedings in this State."

THE PRESIDENT. It is out of order.

MR. LARUE. Is the motion to strike out the section in order?

THE PRESIDENT. The question comes to a direct vote on the section.

REMARKS OF MR. MILLS.

MR. MILLS. Mr. President: I would like to know why the word "intimidation" is used. Now, sir, we are well aware that in respect to the organization of parties in this State a powerful influence is exercised. This might apply to party pressure. We, ourselves, know that there has been an influence at work here during the time we have been in session. There is a Democratic party, the Republican party, and the Workingmen's party. They hold clubs, and the person that undertakes to go contrary to the direction of the club will be intimidated. He may be turned out of that club, sir, and the worst kind of intimidation would be brought to bear upon him, and the members of that club would be guilty of felony under this provision. We have seen the practical application of the rule here. Now, sir, it looks to me as if this proposition presented in this body by these gentlemen was calculated to be a direct slur upon themselves. How does it stand here? Gentlemen that belong to a particular club turned out a member because he did not vote as they directed. Are those persons guilty of a felony? Under the provisions of this section it seems to me that a jury would convict them, and necessarily they would go to the penitentiary.

MR. BARBOUR. Has anybody intimidated you?

MR. MILLS. No; but the gentleman on my left has been intimidated, or an attempt was made to intimidate him. I understand this proposition as well, perhaps, as the gentleman who just spoke to me. I hold that the provision in the statute is better than this section, and much more clear. It cannot have a judicial interpretation. Who will undertake to interpret the word intimidation? Who will be controlled by it? It is got up here for buncombe, more than anything else. It seems to me that it is unnecessary to place this provision in the Constitution.

MR. REYNOLDS. I beg to state that there is no buncombe in that amendment of mine.

MR. DOWLING. Mr. President: I do not thoroughly understand the meaning of this section, although I understand the meaning of the amendment offered by Mr. Reynolds, of San Francisco, and I believe there was a good deal in it. I think the first sentence of this section is wrong. I am as much opposed to lobbying and corrupting Legislatures as anybody. In the commencement of the session I offered an article something similar to this, and it was intended to cover the same idea, although expressed in different words. Now, if the first part of the section ending at the word "crime" is stricken out, I will vote for it, and that will cover the whole ground. Therefore I will offer an amendment, if it is in order.

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

Messrs. Ayers, West, White, and O'Sullivan also demanded the previous question, which was ordered by the Convention.

Upon the adoption of the section as amended, the ayes and noes were demanded by Messrs. Barbour, Condon, Joyce, Doyle, and White.

The roll was called, and the section was adopted by the following vote:

AYES.

Andrews,	Holmes,	Rhodes,
Ayers,	Howard, of Los Angeles,	Rolfe,
Barbour,	Howard, of Mariposa,	Schomp,
Barry,	Huestis,	Shurtleff,
Beerstecher,	Hughey,	Smith, of 4th District,
Bell,	Hunter,	Smith, of San Francisco,
Blackmer,	Inman,	Soule,
Brown,	Johnson,	Stedman,
Campbell,	Jones,	Steele,
Casserly,	Joyce,	Stevenson,
Charles,	Kenny,	Sweasey,
Condon,	Kleine,	Swenson,
Cross,	Laine,	Swing,
Crouch,	Lampson,	Thompson,
Davis,	Larkin,	Tinnin,
Doyle,	Lavigne,	Townsend,
Dudley, of Solano,	Lindow,	Tully,
Estee,	Mansfield,	Tuttle,
Farrell,	McCallum,	Vacquerel,
Filcher,	McComas,	Van Dyke,
Freeman,	McConnell,	Walker, of Tuolumne,
Freud,	Miller,	Waters,
Garvey,	Moffat,	Webster,
Gorman,	Moreland,	Wellin,
Grace,	Morse,	West,
Hager,	Murphy,	Wickes,
Hale,	Nason,	White,
Harrison,	Nelson,	Wilson, of Tehama,
Heiskell,	Neunaber,	Winans,
Herold,	Noel,	Wyatt,
Herrington,	O'Sullivan,	Mr. President—95.
Hitchcock,	Reynolds,	

NOES.

Belcher,	Harvey,	Pulliam,
Biggs,	Kelley,	Reddy,
Boucher,	Keyes,	Reed,
Burt,	Larue,	Ringgold,
Chapman,	Lewis,	Schell,
Cowden,	Martin, of Alameda,	Shoemaker,
Dowling,	Martin, of Santa Cruz,	Smith, of Santa Clara,
Estey,	McFarland,	Stuart,
Glascock,	McNutt,	Turner,
Gregg,	Mills,	Van Voorhies,
Hall,	Ohleyer,	Weller—33.

LOTTERIES.

MR. REYNOLDS. Mr. President: I offer an amendment as a substitute for section twenty-six.

THE SECRETARY read:

"SEC. 26. No lottery nor any gift enterprise, nor any scheme in the nature of such, shall be permitted in this State; nor shall the sale of lottery tickets, gift enterprise tickets, or tickets in any scheme of the nature of a lottery or gift enterprise, be permitted in this State. Nor shall any stock board, or stock exchange, or other association, or stock market for the buying or selling of the shares of the capital stock of corporations, be permitted to exist or to transact such business in this State. All contracts for the sale of shares of the capital stock of any corporation or association on margin, or to be delivered at a future day, shall be void. All contracts made in violation of, or evasive of the foregoing provisions, shall be void. It is hereby made the duty of the Legislature to enforce this section by appropriate legislation."

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: The previous question cut me off from an opportunity to offer this substitute yesterday, and now that the article is before the Convention I offer a substitute for the section. When in Committee of the Whole this section was under consideration, the committee became excited with debate and in one of those freaks of fancy—one of those peculiar moods—got in the habit of voting down every amendment, and this amendment went by the board without, as I believe, due consideration. I find no fault, but only take this opportunity to have it considered. I will not insult the intelligence of this Convention by attempting to prove or show that the stock-gambling business as conducted by these stock boards in San Francisco is a curse to the State, and is one of the worst diseases of the social system and the body politic that exists.

MR. HALE. Will you point out the difference between the section as adopted by the Convention and that amendment?

MR. REYNOLDS. I will. The difference is that the section passed by the Committee of the Whole provides that the Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board. I undertake to say that that will not reach the difficulty, and in that respect I am confirmed by the opinion of all of the best men in San Francisco who have paid any attention to the subject. I was saying that I will not argue that question at all. I will not consume time on that point. That it is an evil that ought to be extirpated there is no doubt. That will be conceded. It has been conceded by nearly every gentleman with whom I have spoken on the subject in this Convention. The amendment I offer is a positive prohibition of the stock board, placing it upon the same footing as lotteries. I outlaw them both by the same provision. That it ought to be done there is not a reasonable doubt. For the purpose of illustrat-

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ing that position better than I can by any words that I can say, I will ask the Secretary to read a paragraph from an editorial article printed in the San Francisco Chronicle, of January tenth, upon this subject. The subject treated of is the section adopted by the Committee of the Whole, and upon that question, under the heading, "Cut out the cancer," the article discourses as follows:

THE SECRETARY read:

"We have heretofore commented favorably upon this section as much better than nothing, and we are still decidedly of that opinion. The more we reflect on the subject, however, the more we are convinced of the necessity for something stronger. The stock operations carried on at the boards in this city have become so utterly bad that it is doubtful if they can be even partially cured by regulation, and we know by experience how potent in the legislative halls is the power of the stock manipulators. In Nevada they carried through the Legislature a measure in their favor, though all the members had been elected upon a pledge entirely in opposition to it. At the last session of our Legislature they defeated, with coin, a popular bill to regulate the buying and selling of stocks.

"The fact that the mines most in need of regulations as to reports, etc., are outside of the State and difficult to reach, is another important consideration. In any view it is better and easier to prohibit a recognized and unnecessary evil than to attempt the regulation of it. The mining stock boards stand in this latter position. They are not at all necessary to the mines. They add nothing to the bullion product; on the contrary, they foster the habit of pure stock gambling, with all its attendant and incalculable evil consequences. It will be difficult, if not impossible, to confine the boards to their legitimate functions as mediums of exchange. In the hands of men ambitious only for wealth, with little regard for the means by which they get it, the devices for evading a statutory regulation will be many and hard to circumvent. Hence, the shortest and surest remedy for the manifold evils of the system will be to prohibit it altogether. That this can be done, we know by what has been done in preventing lotteries. As to the policy of doing it, we think there is hardly any necessity for argument. It is sufficient to point to the condition of our people to-day—thousands and tens of thousands of whom have been wrecked in fortune, and too many started upon a career of crime."

MR. REYNOLDS. In the same connection I ask the Secretary to read one more paragraph from the same paper, of January fifteenth, on the same subject, and I ask the respectful attention of the Convention to the opinions expressed.

THE SECRETARY read:

"ABOLISHING THE STOCK BOARDS.

"Within a few weeks the Constitutional Convention will finish its work and adjourn. As the end of its session approaches, the prospect of framing a document which will be acceptable to the people, improves. Many proposed changes in our system of taxation, relative to the judiciary, and other matters, are highly important and are greatly needed. None, however, are of more consequence than the proposed inhibition of the mining stock business. We desire to again call the attention of the Convention to this subject, and to urge the adoption of a more stringent remedy than the one already indorsed. Nothing short of a positive prohibition of the whole stock exchange system will fully remedy the evil. We suggest as a substitute for the clause heretofore adopted, something like the following: 'All contracts for the purchase and sale of the shares of the capital stock of a corporation in any stock board, stock exchange, or other association for the buying and selling of stocks, shall be null and void, as against public policy, and such stock boards shall be suppressed as a public nuisance.'"

MR. REYNOLDS. Mr. President: I cause these extracts to be read with a view of showing the drift of public opinion on this subject, not for the purpose of convincing this Convention that the stock business ought to be rooted out, but only to show that public opinion is setting in the direction of the extirpation of the whole business, on the ground of public policy, precisely as we prohibit gambling, precisely as we prohibit lotteries. I have taken much pains to ascertain the effect that such a provision would have upon the question of the adoption of this Constitution, in the vote of the people of San Francisco. I wrote to numbers of persons, among them Mr. Kearney, to ascertain his views in regard to the matter, and whether it would be in order to extirpate the business, and he has answered in the affirmative.

THE PRESIDENT. The gentleman's time is up.

Messrs. Huestis, West, Van Voorhies, Pulliam, and Van Dyke demanded the previous question, which was ordered by the Convention, on a division, by a vote of 50 ayes to 41 noes.

Upon the adoption of the amendment of Mr. Reynolds, the ayes and noes were demanded by Messrs. Farrell, Huestis, Smith of San Francisco, Bell, and Dowling.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barbour,	Grace,	Lindow,
Beerstecher,	Harrison,	Mansfield,
Bell,	Herrington,	McComas,
Brown,	Hilborn,	Moffat,
Condon,	Hitchcock,	Moreland,
Cross,	Howard, of Los Angeles,	O'Sullivan,
Dowling,	Hunter,	Reynolds,
Doyle,	Joyce,	Ringgold,
Dudley, of Solano,	Kelley,	Smith, of Santa Clara,
Farrell,	Kenny,	Smith, of San Francisco,
Filcher,	Keyes,	Stedman,
Freud,	Larkin,	Sweasey,
Gorman,	Lavigne,	Swenson,
Tinnin,	West,	Wilson, of Tehama,
Turner,	Wickes,	Winans,
Tuttle,	White,	Wyatt—49.
Weller,		

NOES.

Andrews,	Holmes,	Pulliam,
Ayers,	Howard, of Mariposa,	Reddy,
Barry,	Huestis,	Reed,
Biggs,	Hughey,	Rhodes,
Blackmer,	Inman,	Rolfe,
Boggs,	Johnson,	Schell,
Boucher,	Jones,	Schomp,
Burt,	Kleine,	Shafter,
Campbell,	Laine,	Shoemaker,
Caples,	Lampson,	Shurtleff,
Casserly,	Larue,	Smith, of 4th District,
Chapman,	Lewis,	Soule,
Charles,	Martin, of Alameda,	Steele,
Cowden,	Martin, of Santa Cruz,	Stevenson,
Crouch,	McCallum,	Stuart,
Davis,	McConnell,	Swing,
Dunlap,	McCoy,	Thompson,
Estee,	McFarland,	Townsend,
Estey,	McNutt,	Tully,
Garvey,	Miller,	Vacquerel,
Glascock,	Mills,	Van Dyke,
Gregg,	Morse,	Van Voorhies,
Hager,	Murphy,	Walker, of Tuolumne,
Hale,	Nason,	Waters,
Hall,	Neunaber,	Webster,
Harvey,	Noel,	Wellin,
Heiskell,	O'Donnell,	Wilson, of 1st District,
Herold,	Ohleyer,	Mr. President—84.

ON RECONSIDERATION.

MR. BROWN. Mr. President: Yesterday I gave notice that I would to-day move to reconsider the vote by which section twenty-seven of the report of the Committee on Legislative Department was adopted by this body. It is with regard to dividing the Congressional districts of this State. I do not propose to make a speech at all upon the subject, but I am satisfied that the amendment of the gentleman from Napa, Mr. Shurtleff, was not properly understood ——

THE PRESIDENT. The gentleman is mistaken. No such notice was given.

MR. BROWN. It is published here in the Journal.

THE PRESIDENT. The notice was to reconsider the vote by which the section was adopted. No such vote has ever been taken. You should have given notice of a motion to reconsider the vote by which the amendment was adopted.

MR. WHITE. Mr. President: I wish to call up the reconsideration of section twenty-four. I gave notice yesterday. I have nothing further to say.

THE PRESIDENT. The gentleman's motion would be out of order.

MR. MCCALLUM. Mr. White gave notice. It will be found on page seven of the Journal.

THE PRESIDENT. The notice should have been given to reconsider the vote by which the Convention adopted the amendment reported by the Committee of the Whole as amended. There is no such notice given, and, therefore, the motion is not in order. You cannot get to your amendment without reconsidering that vote.

RELIGIOUS SERVICES.

MR. O'SULLIVAN. Mr. President: I offer an additional section.

THE SECRETARY read:

"SECTION —. No money shall be appropriated for the payment of any religious services in institutions controlled by the State, or in either House of the Legislature."

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: In this great American Republic since its foundation it has been established as supreme law that there is a total separation between Church and State; that we shall have no religion, no State church; but a clear recognition of the fact that every man has a right to worship God as he pleases. As American citizens we glory in this firm establishment of religious freedom and the rights of conscience, and with the light of history before us we have good reason to rejoice that the founders of the Republic had the good judgment to declare man's right to religious as well as civil freedom. Religious fanaticism and sectarian bigotry have cost the shedding of rivers of blood among our ancestors in Europe, and we ought to thank God that we are rid of the curse of these crimes against humanity. The theory of our Government plainly implies that there is an absolute separation of Church and State. Our fundamental law declares so in substance, yet, Mr. President, instances are not wanting going to show that we do not strictly carry it out. The employment of chaplains, I care not to which sect they belong, is a clear violation of that separation of Church and State which the fathers established as the corner-stone of American liberty. The citizens of the United States are not only cosmopolite in character, as regards race, but are also men of diverse religious beliefs, and it is a well known fact that the majority of the American people are not attached to any church. Hence it is perfectly proper that the Government should say to all ministers of religion: "Stay where you belong, attend to your churches; the State will take care of itself without your influence or interference." This thing had better be stopped, and the time to stop it has now come, and by so doing we can save good preachers from becoming bad politicians.

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MR. SHAFTER. Mr. President: After the amendment of the gentleman is seconded and voted down, I have an amendment to offer before this article is ordered engrossed.

MR. REED. Mr. President: I wish to make a suggestion to the gentleman that he might attach to his amendment, so as to make it a felony for any one to read the Lord's Prayer within three miles of any public institution in this State.

The ayes and noes were demanded by Messrs. O'Sullivan, Beerstecher, Lindow, Freud, and Brown.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barbour,	Herrington,	Reynolds,
Beerstecher,	Hunter,	Ringgold,
Bell,	Joyce,	Smith, of San Francisco,
Blackmer,	Kenny,	Sweasey,
Caples,	Lavigne,	Swenson,
Condon,	Lindow,	Tinnin,
Farrell,	Nelson,	Walker, of Tuolumne,
Freud,	Neunaber,	White—27.
Grace,	O'Sullivan,	

NOES.

Andrews,	Hitchcock,	Pulliam,
Ayers,	Holmes,	Reddy,
Barry,	Howard, of Los Angeles,	Reed,
Belcher,	Howard, of Mariposa,	Rhodes,
Biggs,	Huestis,	Rolfe,
Boggs,	Hughey,	Schell,
Boucher,	Inman,	Schomp,
Burt,	Johnson,	Shafter,
Campbell,	Jones,	Shoemaker,
Casserly,	Kelley,	Shurtleff,
Chapman,	Keyes,	Smith, of 4th District,
Charles,	Laine,	Soule,
Cowden,	Lampson,	Stedman,
Cross,	Larkin,	Stevenson,
Crouch,	Larue,	Stuart,
Davis,	Lewis,	Thompson,
Dowling,	Mansfield,	Townsend,
Dudley, of Solano,	Martin, of Alameda,	Tully,
Dunlap,	Martin, of Santa Cruz,	Turner,
Estee,	McCallum,	Tuttle,
Estey,	McComas,	Vacquerel,
Filcher,	McConnell,	Van Dyke,
Freeman,	McCoy,	Van Voorhies,
Garvey,	McFarland,	Waters,
Glascock,	McNutt,	Webster,
Gorman,	Miller,	Weller,
Gregg,	Mills,	Wellin,
Hager,	Moffat,	West,
Hale,	Moreland,	Wickes,
Hall,	Morse,	Wilson, of Tehama,
Harrison,	Murphy,	Winans,
Harvey,	Nason,	Wyatt,
Heiskell,	O'Donnell,	Mr. President—101.
Hilborn,	Ohleyer,	

MR. SHAFTER. Mr. President: I offer an amendment to section thirty-eight.

THE SECRETARY read:

"In lines eight and nine, strike out 'grant' and insert 'gift.'"

MR. SHAFTER. Mr. President: The word "grant" signifies convey or conveyance, and that would prohibit the State from conveying anything for a valuable consideration.

The amendment was adopted.

MR. VAN DYKE. Mr. President: I move that the article be engrossed and read a second time, and on that I move the previous question.

MR. CROSS. Mr. President: I rise to a point of order. The same gentleman cannot make a motion, and at the same time move the previous question.

THE PRESIDENT. The point of order is not well taken.

MR. VAN DYKE. I withdraw my motion for the purpose of allowing the gentleman from Napa to introduce his amendment.

THE PRESIDENT. The gentleman cannot do it without consent.

Messrs. Larkin, Freeman, Dunlap, and Condon also demanded the previous question.

The Convention refused to order the previous question, on a division, by a vote of 48 ayes to 59 noes.

MR. SHURTLEFF. Mr. President. I offer an amendment.

THE SECRETARY read:

"Amend section twenty-seven by adding the following at the end of the section: 'Any county or city and county containing a population greater than the number required for one Congressional district, shall be formed into one or more Congressional districts, according to the population thereof; and any residue, after forming such district or districts, shall be attached by compact adjoining Assembly districts, to a contiguous county or counties, and form a Congressional district. In dividing a county or city and county into Congressional districts, no Assembly district shall be divided so as to form a part of more than one Congressional district, and every such Congressional district shall be composed of compact contiguous Assembly districts.'"

MR. LARKIN. That proposition was voted down yesterday.

MR. SHURTLEFF. It is not the same amendment. It is a part of that amendment, but it is not the entire amendment.

THE PRESIDENT. It is substantially the same amendment. The question is upon ordering this article to be engrossed and read a second time.

Carried.

NOTICE.

MR. HUESTIS. Mr. President: I hereby give notice that on to-morrow, February seventh, eighteen hundred and seventy-nine, I will move to amend Rule Twenty-four of the Standing Rules of this body, by striking out the word "five," in line two, and inserting in lieu thereof the word "fifteen."

THE PRESIDENT. The Convention will resume the consideration of the article on revenue and taxation. The question is on the adoption of the amendment offered by the gentleman from Solano, Mr. Dudley.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

THE PRESIDENT. The question is on the substitute offered by the gentleman from Solano.

MR. FILCHER. Mr. President: I wish to call attention to the fact that if this section is adopted, this substitute, it will conflict with section two, which says, that certain classes of property shall be taxed according to its true value in money. I desire the Convention to understand that they are inconsistent.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: The amendment of the gentleman from Solano will not better the section any. The same thing will be found at the end of the section reported by the committee, unless he moves to strike out the whole section. As it stands there are other portions of this article which require that certain kinds of property shall be taxed according to its true value in money any way. If it be in order I will propose to amend the amendment.

THE PRESIDENT. It is not in order at present.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Stuart, Wyatt, West, and Webster.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Solano, Mr. Dudley.

Division was called for, and the amendment was lost by a vote of 43 ayes to 62 noes.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

The ayes and noes were demanded by Messrs. White, Smith of San Francisco, Pulliam, Schomp, and Hitchcock.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Jones,	Reddy,
Boucher,	Laine,	Rhodes,
Casserly,	Larue,	Rolfe,
Charles,	Lewis,	Shafter,
Cowden,	Mansfield,	Stuart,
Crouch,	Martin, of Alameda,	Thompson,
Estee,	Martin, of Santa Cruz,	Townsend,
Glascock,	McCallum,	Vacquerel,
Gregg,	McComas,	Van Dyke,
Hall,	McNutt,	Wilson, of 1st District,
Hunter,	Noel,	Winans,
Inman,	Ohleyer,	Mr. President—36.

NOES.

Andrews,	Harvey,	Reynolds,
Ayers,	Heiskell,	Ringgold,
Barbour,	Herold,	Schell,
Barry,	Herrington,	Schomp,
Beerstecher,	Hilborn,	Shoemaker,
Bell,	Hitchcock,	Smith, of Santa Clara,
Biggs,	Holmes,	Smith, of 4th District,
Blackmer,	Howard, of Los Angeles,	Smith, of San Francisco,
Boggs,	Howard, of Mariposa,	Soule,
Brown,	Huestis,	Stedman,
Burt,	Hughey,	Steele,
Campbell,	Johnson,	Sweasey,
Caples,	Kelley,	Swenson,
Condon,	Kenny,	Swing,
Cross,	Keyes,	Tinnin,
Davis,	Lampson,	Tully,
Dowling,	Larkin,	Tuttle,
Doyle,	Lindow,	Van Voorhies,
Dudley, of Solano,	McConnell,	Walker, of Tuolumne,
Estey,	Mills,	Waters,
Farrell,	Moreland,	Webster,
Filcher,	Morse,	Weller,
Freud,	Murphy,	Wellin,
Garvey,	Nason,	West,
Gorman,	Nelson,	Wickes,
Hager,	Neunaber,	White,
Hale,	O'Sullivan,	Wyatt—83.
Harrison,	Pulliam,	

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TAXATION OF PROPERTY.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section two.

THE SECRETARY read:

"SEC. 2. Laws shall be passed taxing all moneys, credits secured by mortgage or trust deed, or unsecured, investments in bonds, franchises, and all other property, real and personal, according to its true value in money, except as hereafter provided; but the Legislature may authorize, except in the case of credits secured by mortgage or trust deed, a deduction from credits of debts due to bona fide residents of this State. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

MR. JOHNSON. Mr. President: I offer a substitute for section two.

THE SECRETARY read:

"SEC. 2. Laws shall be passed taxing all moneys, credits secured by mortgage, deed of trust, contract, or other obligation affecting property, and credits not so secured, investments in bonds, franchises, and all other property, real, personal, or mixed, according to their true value in money, except as hereafter provided; but the Legislature may authorize a deduction of debts due to bona fide residents of this State from credits, except in the case of debts or credits secured by mortgage, deed of trust, contract, or other obligation affecting property. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

THE PRESIDENT. The question is on the adoption of the substitute of the gentleman from Sonoma, Mr. Johnson.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I gave notice, after the adoption of section five, that I would make a slight change in the phraseology of section two, so as to agree with our action in adopting section five. I assume that it is the sense of this Convention that solvent credits and mortgages shall be taxed. That is my position, and I believe it is the position of a majority of this Convention. Section two was adopted by a vote of something like seventy-five to twenty-five. There had been a long discussion on this subject, and there was a great difference of sentiment in reference to the matter, but after the subject had been thoroughly discussed—almost exhausted—it was finally voted upon, and section two adopted; therefore I assume that it is in accord with the sentiment of this Convention. The only change made is a slight change in the phraseology, so as to accord with section five. But if this Convention refuses to tax mortgages and solvent credits, then we have got to go through this whole work of taxation again. We will have to commence *de novo* and adopt some kind of a system of taxation. Section two and section five are not entirely in accord. Of course every one knows that a mortgage is not an interest in real estate, in this State, it is simply a security; but the committee here, in the exercise of a wise judgment, have said, that as far as taxation is concerned, a mortgage shall be an interest in the real estate. Then there is another interest, the interest which is held by the owner of the land; there are two interests then represented in section five, the interest of the mortgagor, and the interest of the mortgagee; those two interests constitute the land. Now, sir, I say that the mortgage security, and the interest which the owner of the land has, outside and above the mortgage, constitute the land. Now, how is this tax apportioned? Why, in this way: We say the mortgagor shall pay taxes on his interest, and the mortgagee shall pay taxes on his interest; it is then apportioned between them upon the principle of equity and equality, and I say there is no section here which will commend itself more to this Convention than section five; it is based upon justice and equity. A man, when he gives a mortgage on his land, does not wish to pay taxes on the entire land, but only on the land less the mortgage, and that is exactly what we have provided for in section five. Now, sir, heretofore it has been the land only that has been taxed, but under this scheme, we tax the interest of the mortgagor and the interest of the mortgagee, and the two interests constitute the entire property. Now, sir, I say, as far as secured debits are concerned, this matter is settled by section five, upon the principle of equity and justice.

So far I have been talking only about secured credits, and I will leave that subject. Unsecured credits have no element of real estate about them. They do not constitute a lien upon land. They are not recorded in the Recorder's office. They do not give notice to subsequent purchasers. But, inasmuch as they are representatives of value, we say that they ought to be taxed. But it will be urged that there ought to be a deduction from these unsecured credits. Now, sir, we are trying to get at this equitably. We have left the secured credits, having adjusted them on an equitable basis; and now we come to the unsecured credits, and we want to know upon what basis we can apportion them. I say, that one intangible thing should be set off against another intangible thing; that an intangible indebtedness should be set off against intangible credits. We have given the Legislature power to authorize these deductions when the debts are due bona fide residents of this State. The Legislature is authorized to deduct those intangible debts from intangible credits, and the Constitution has even thrown a check around that, by declaring that these debts must be due bona fide residents of this State; wherefore, without this, parties might set up that they were owing parties outside of the State, and the thing could never be found out. By permitting these deductions to be made only where debts are due residents of this State, I say we have thrown around it a safeguard that ought to commend itself to your approval. Now, some gentlemen may say that it does not go far enough. Now, we must realize this thing: that if we cannot obtain exactly what we want, it is the part of wise statesmanship to approximate it as nearly as we can; and, therefore, I argue that we ought to sustain this provision, because it is an elastic power given to the Legislature. Circumstances may arise hereafter which would justify deductions; therefore, our representatives may be instructed to do so. I think it is sufficiently iron-bound without making it more so. Upon the other hand, there are gentlemen who are not in favor of making deductions. These antagonisms must be reconciled the best way we can. I maintain that this provision ought to commend itself to the judgment of this Convention. It will be seen that in section two we speak of credits secured by mortgage, deed of trust, or other obligation affecting property. In section two we are talking about credits so secured; in section five we are talking of the security.

[At this point in the speaker's remarks the gavel fell.]

MR. HOWARD, of Los Angeles. Is a substitute in order?

THE PRESIDENT. No, sir.

MR. KELLEY. Is an amendment to the amendment in order?

THE PRESIDENT. No, sir.

SPEECH OF MR. HALE.

MR. HALE. Mr. President: I have not been able, from hearing the amendment read, clearly to understand the change which it makes to section two as amended by the Committee of the Whole. I take it for granted, however, that its purpose is only to mature the section reported by the Committee of the Whole. Now, sir, I trust that neither this amendment nor section two itself, will be adopted, and I take issue with the gentleman from Sonoma upon the proposition which he has very clearly stated, that section two, formulated by the Committee of the Whole, as amended by him, is in harmony with section five, as adopted by the Committee of the Whole. If it is, the argument is good; otherwise, it falls to the ground. If this amendment should be voted down, and the Convention should refuse to concur in the section, I propose to offer a substitute to section two, which has been known to the Convention as the Boggs amendment. I propose to do that, sir, for the purpose of solving the whole scheme of taxation upon property—tangible and intangible—upon the basis of the principle enunciated in section five. The principle is this: it deals with the contract, or it deals with the debt intended to be secured by the contract. And in order to show that this interpretation is correct, I call the attention of the Convention to the terms of section five. True, it says that a "mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purpose of assessment and taxation, be deemed and treated as an interest in the property affected thereby," yet it deals with the credit secured by the contract or mortgage, for it proceeds to enact that in the distribution between the contracting parties each shall be assessed separately; that is, the land and the debt secured by mortgage or deed of trust, shall be assessed to their respective owners, and they shall be taxed upon it. It means this: If A loans B five thousand dollars on B's land worth ten thousand dollars, that for the purpose of taxation, there shall be assessed to A as the loaner or creditor a sum equal to the amount of his debt secured by the mortgage, or five thousand dollars; and there shall be assessed to B, as the owner of the land, the residue of the value of the land—five thousand dollars. The land represents the aggregate value, and it is distributed between the parties. As Mr. Johnson says, every lawyer knows that a mortgage is not an interest in the land in a legal sense. It is here, however, declared to be such for the purposes of taxation, and only for the purposes of taxation, not modifying the general rule of law in other respects. This tax may be paid by either of the parties. If it is paid by the mortgagor, it shall be deemed an investment by him in the land in a sum equal to the tax so paid. If upon the other hand it is paid by the owner of the land it shall be deemed a payment on the debt. That is the principle of section five. Now, what distinction can the gentleman or anybody else draw between that and an unsecured debt. The only difference in the world is the degree of security, and the procedure by which its payment is enforced. In all other respects they stand upon the same plane, both in law and in equity. Now, sir, one more point. What is the principle upon which section five proceeds? Why this distribution? Because in all cases the property of the debtor represents in itself the value and the amount of the debt. The debtor's property represents the debt he owes the creditor, and it is by reason of the fact that he has been required to pay the taxes upon that which in fact he does not own that this complaint has gone up all over the State from the debtor class. Now, the Boggs amendment deals with all these debts alike. It proceeds in all cases upon the assumption that the debtor's property represents the amount of the debt he owes. If he pays the taxes, he is allowed a rebate when he comes to pay up his debt. It is plain, simple, and efficient, and the rule applies to all solvent debts, whether secured or not. It brings them all under this rule, and distributes the burden of taxation between the parties according to the interest which they have.

SPEECH OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: When this matter was up before the Committee of the Whole, I endeavored, unsuccessfully, for several days, to introduce an amendment which might be supported by those who believed we should tax the real and not the ideal. I was not successful, and I suppose, under the system here, I will not have the opportunity. I believe that we should tax things, and not mere agreement about things. I believe in taxing what is material, what occupies space, what may be perceived, what we can touch and feel and taste and smell. I believe, sir, that no gentleman here will say that if a man of responsibility, upon sufficient security, agrees and contracts to deliver to another a thousand bushels of wheat within a year, that contract should be taxed in the hands of either party. But, sir, if he agrees to give him a thousand dollars in a year, that must be taxed. Now, where is the difference? I say there is none in the world. The one is not property; it is not a thing; it is not tangible; you cannot put your hand upon it; it does not add to the wealth of the country. It exists merely in the con-

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templation of the mind, and why should the promise to pay one thousand dollars be taxed any more than the promise to deliver one thousand bushels of wheat?- Now, if I have an opportunity, I shall offer this amendment:

"All property, except private property exempt from taxation under the laws of the United States, public property of the United States, of this State, or any municipality thereof, shall be taxed in proportion to its value, to be ascertained by law; provided, that growing crops, debts, or credits, and choses in action, whether or not secured by mortgage or other liens, shall not be considered property for purposes of taxation."

Now, there has been a great deal of nice reasoning about what is property. I suppose it would not be improper to say that a debt, in one sense, is property. But my amendment says that a mere debt, or contract, or chose in action, is not property for the purpose of taxation. I do not believe it is for the best interests of this county to enforce this rule in relation to debts and credits, and other intangible property. You cannot do it uniformly. It opens the door for perjury and frauds. You never can have anything like uniformity, and such a system of taxation will not redound to the interests of the country. What do laboring men want? Why, employment. What makes employment? Enterprise. What makes enterprise? Money. The law that will make money plenty, and encourage its coming, will subserve the best interests of all classes.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: If this Convention, instead of trying to adopt a scheme by which these credits could be taxed, had sought to make out a plan how not to do it, I think they would have accomplished their object. I have studied this proposition ever since it was adopted in Committee of the Whole.

MR. JOHNSON. Are you in favor of taxing credits or not?

MR. DUDLEY. Yes, sir.

MR. JOHNSON. Except by an income tax.

MR. DUDLEY. I should prefer that. I undertake to say here, without fear of contradiction, that there is no possibility of any middle ground between the system which taxes credits without rebate, and that system which wipes them out entirely. Now, sir, section two starts out with the proposition that these credits shall be taxed. And then it says the Legislature may provide that they may be wiped off the assessment roll by indebtedness owing by the parties to whom these credits are due. Now, every gentleman here understands how easily these debts may be manufactured. It is a relief to the wealthy, but not to the poor man, because he is generally in debt, with no debts owing to him. Section five provides that, not only may the amount of these credits be deducted from the value of the debts due the party, but that they may be taken from the assessed value of actual property; and after this Convention provides such a scheme as that in regard to secured indebtedness, you cannot possibly convene any Legislature in this State that would not avail themselves of the privilege granted here, and extend the provision to unsecured indebtedness. There is no reason for this distinction between the two—none whatever. Now, I am satisfied, from the temper of this body, that the Convention is not going to adopt what I consider the most practical plan of assessing these credits, provided they are to be taxed at all. They are not going to do it. The discussion here on section five has shown that very plainly. But this proposition effectually closes the door to getting any more revenue than we are now getting. It cannot decrease the rate; it cannot increase the assessment roll. It cannot decrease the burden of the taxpayers. And the very first time a man is assessed who has his estate mortgaged, he will curse the Convention that adopted this system. The result will be an increased burden upon owners of land throughout the State. Land to-day is assessed for as much as any other property in the State, and yet, in many portions of the State it is not assessed any higher than the mortgage value; and when the Assessor comes around, and finds there is nothing to be taxed beyond the amount of the mortgage, he will insist upon putting up the valuation. Land heretofore assessed at thirty dollars an acre, will be assessed at fifty and sixty dollars an acre. The mortgage creditor will compel the borrower to pay the tax on the mortgage, and the only result of this whole scheme will be to put up the valuation on landed property, while all other property will remain the same. By this means you effectually close the door so that the Legislature can never get at anything, under the last section of this article. It is a burdensome system, and one that will be unsatisfactory to the people. It is a delusion and a snare. I hope that section two will be stricken out, and that some gentleman will offer a substitute.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I believe, as the gentleman who has just taken his seat believes, that all property should be taxed. The time of this Convention is limited, and it is no time to open up a general discussion upon the subject of taxation. I hope the amendment of the gentleman from Sonoma, Mr. Johnson, will prevail. In order that we may more clearly understand wherein his amendment will harmonize the section with section five, I ask the gentleman to explain wherein it will harmonize them.

MR. JOHNSON. Mr. President: I can explain that. Section five is in respect to an interest in property, where that interest is manifested by mortgage, deed of trust, contract, or other obligation. It all affects property. The only change affected by this amendment is simply to state that in unambiguous language. In order to make it accord with section five, we have inserted in section two the words, "credits secured by mortgage, deed of trust, contract, or other obligation affecting property." In the clause in respect to deductions, the same language is used.

MR. WEST. I hope the amendment will be adopted.

SPEECH OF MR. WELLER.

MR. WELLER. Mr. President: I hope this amendment will not pass this Convention without being remodeled. The main object of taxation is for the support of the government of the State. It is for the payment of the expenses of the State government, in order that each individual may be protected in his person and property. The manner in which this amendment is brought in is intended to throw a cloud upon the subject-matter. Now, sir, we as countrymen do not ask the adoption of this. When we buy a piece of property——

MR. WHITE. Who are you speaking of when you say we of the country.

MR. WELLER. No reference to you, sir. [Laughter.] I refer to those who live in the country. The question is this: They come out in the first place and say that all the obligations which they hold against the country people, and all the demands they hold against them in the shape of notes or mortgages, are mere moonshine. They are not tangible. They are not property. Now, what is the result going to be if section five is adopted? Why those of us who are a little short, and have had to borrow money, will get a short notice from the bank, informing us that our note is due, and must be paid at once. There is where the moonshine of the thing will come in. I look upon this section five as merely a mask to cover up the very injustice that has been practiced heretofore. Now, I am opposed to the idea of deductions. That is where the moonshine comes in. The men who hold these mortgages should be taxed separately and independently of the land. They are protected by the Government, their property is protected, and they should be compelled to bear their portion of the burden.

This great question of taxation has been written about, and talked about, and thought about; Commissioners have been appointed to investigate it, and to find out the best mode of raising funds for the support of Government, and yet the conclusions they have arrived at have not been equal nor just in any respect whatever. They have not yet found the philosopher's stone. We cannot undertake to regulate people's business. We cannot regulate the indebtedness which exists between individuals. We don't propose to inquire into men's private business affairs. We propose to tax everything that a person has; every thing that he can call his own; all his means. When I buy a piece of land, and the seller chooses to accommodate me by taking only a portion of the purchase price, I do it with my eyes open to the fact that I will have to pay taxes on the land. When a man comes into your town to buy property, he will be very apt to inquire what the tax is upon property before he invests his money. He knows what he will have to pay, and let him regulate his private business accordingly. Equal taxation has never been arrived at by any Government in the world, and probably never will; but we should get as near to perfection as possible. Now, there is nothing in this article. It will lead to complications and litigation, and the result of litigation is never in favor of the lower and industrial classes, because they always pay their taxes. It will not benefit them. On the contrary, their burdens will be increased by these provisions. There can be no other result. There is no usury law, and the lender, if he is compelled to pay this tax, will simply add it on in the shape of interest. So that clause is a blind; it is nothing but moonshine. The only true rule is this: tax every interest in the State; tax every person for what he has, and what he calls his own.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: If we are wrong about the theory of taxation, as laid down in section two and section five, we desire to be set right, because we are anxious to have all property taxed. There is no desire to exempt any class of property or any class of indebtedness. Now, the amendment of Judge Johnson, as I understand it—and I will say that I may be mistaken—but I am obliged to take an opposite view from that maintained by the gentleman from Santa Clara, Mr. Weller. The change which that amendment contemplates in nowise affects real, personal, or mixed property—in nowise. It allows no deduction on the value of real, personal, or mixed property; no deduction from the value of tangible property as regards taxation. The amendment reads as follows:

"SEC. 2. Laws shall be passed taxing all moneys, credits secured by mortgage, deed of trust, contract, or other obligation affecting property, and credits not so secured, investments in bonds, franchises, and all other property, real, personal, or mixed, according to their true value in money, except as hereafter provided; but the Legislature may authorize a deduction of debts due to bona fide residents of this State from credits, except in the case of debts or credits secured by mortgage, deed of trust, contract, or other obligation affecting property. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

The original section reads as follows:

"SEC. 2. Laws shall be passed taxing all moneys, credits secured by mortgage or trust deed, or unsecured, investments in bonds, franchises, and all other property, real and personal, according to its true value in money, except as hereafter provided; but the Legislature may authorize, except in the case of credits secured by mortgage or trust deed, a deduction from credits of debts due to bona fide residents of this State. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

The object is simply this: to tax credits, not to tax the property. It does not affect tangible property, whether real or personal. It proposes to allow parties to deduct debts from credits, and that is the law to-day, as I understand it. Now the gentleman from Santa Clara has spoken mostly in regard to section five. I know that the argument has been that the borrower, or in other words the farmer, will be obliged to pay the tax in any event. That the borrower must pay the tax. That is the cry. Well, now, let us see what effect section five will have. If the

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deduction contemplated in section five is not allowed, and the theory of Mr. Weller and those who hold with him is correct, then if a certain parcel of land is worth ten thousand dollars, and that parcel of land be assessed for ten thousand dollars, and there be a mortgage of five thousand dollars on that land, then, if there be no deduction allowed from the assessed valuation of that land, the borrower in that case is obliged to pay the tax upon the mortgage, for five thousand dollars, and upon the whole property, worth ten thousand dollars. Thus he pays taxes upon fifteen thousand dollars. That is the legitimate consequence of the argument of the gentleman. If no deduction be allowed he pays taxes upon the assessed valuation and upon the mortgage, making a total of fifteen thousand dollars.

MR. WELLER. Is not the rate of taxation lessened accordingly?

MR. BEERSTECHER. No, sir. On the other hand, if we adopt section five, as the section stands, the man owning the property worth ten thousand dollars has a right to deduct the mortgage—five thousand dollars—and he pays taxes for only five thousand dollars. So that if he should be compelled to pay the tax upon the mortgage also, as the gentleman claims is inevitable, even then he would only be paying taxes on the full value of the land, or ten thousand dollars. I am unable to draw any other conclusion from it. I am unable to see why the farmer, by the express provisions of section five, is not benefited to the extent of five thousand dollars. On the other hand it provides for the taxation of mortgages. It gives preference in favor of the man owning the land, and he has a claim as against the demand of the person owning the mortgage. Now, the object of Mr. Johnson is to harmonize section two and section five. It does not allow deductions upon any property of any character other than as provided in section five.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I was not fortunate enough to be here before. But I wish to say a few words in regard to what I consider to be the correct principles of taxation. The mind in this entire discussion has been directed to property rather than to individuals, thereby misleading. We tax individuals and not property. What is a tax? It is the tribute required of the citizen for the support of the Government. Property is simply used to measure the amount that is contributed. I care nothing about property, but leave that out of the question. The question is, how much protection has A received? How much should he pay? Now, sir, this section as it reads is a delusion and a snare. The amendment of the gentleman from Sonoma is the only one that meets my view. We are here trying to legislate for the debtors. That is none of our business. It is mere political buncombe to legislate in a way that will encourage indebtedness. All this property should pay. This system of deductions is a delusion. Let them all pay. Therefore, I am in favor of the Moreland amendment. It is the only correct principle by which we can work this matter out. If you adopt this proposed section when you go back home you will be laughed at.

SPEECH OF MR. WHITE.

MR. WHITE. Mr. President: I agree fully with the gentleman that taxes ought to be levied on the people, but not in any other sense than upon what he is worth. Upon that he ought to be taxed, and not one cent more. That is the principle of taxation. Now, sir, if I had a farm worth ten thousand dollars, and have borrowed five thousand dollars on it, am I worth ten thousand dollars? Don't I owe five thousand dollars? But I am taxed ten thousand dollars, and according to Mr. Weller I am taxed fifteen thousand dollars. And then the rich man will come up and swear that he has one hundred thousand dollars, and perhaps a great deal more. Why not tax him also? Why not tax him? Why tax me because I am in debt? How any honest man can come here and propose to tax a poor man for what he does not own is more than I can see. You propose to tax the rich man only on the property he has in hand. It is all very fine to argue for those who are above all these things. They never owe a dollar, and never know what it is to pay a double tax. They never know what it is to pay to the very utmost on their land. I tell you, sir, I have paid on my land one third of every dollar I made out of it. Then after a man has paid on every bit of land he has, then some of you propose to tax him on what he owes. I trust and hope that the heart of this Convention is different. I trust and hope that we will stand by the men who are struggling to keep up, the farmers and business men who are struggling to live. I hope we will not compel them to be taxed in that way. I cannot understand how a man with feeling, and heart, and honesty can entertain such a proposition. I trust that the amendment of Mr. Johnson will prevail. I am in favor of taxing everything, but I am not in favor of crushing the struggling classes, and driving them off the farm, and sending them to the City of San Francisco to starve and go hungry as they were last Winter in the very heart of that city. I was there last Winter and saw a number of ladies and men handing money and food out. It was a sorry sight for the State of California that fourteen thousand white citizens should be there starving. I tell you, sir, that this must be stopped. I hope this amendment and section five will be adopted, for nothing else will satisfy the people of the State of California. The people have demanded this and nothing else will do.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I have, before, denounced this proposition as a delusion and a snare. I rise now merely to enter my protest against this folly which is included in these two sections—it is too plain to waste time in talking about it. The general expression, upon all sides, is the same. These gentleman are trying to arrive at the same result by different roads. The gentleman from Santa Cruz says he is in favor of taxing a man for everything he has, and no more. No man can tell whether he is going to be taxed on less or more than he is worth, under these two sections. You cannot amend them so that they can be understood. The gentleman from Sonoma, when he offered the amendment, said he would have to explain it by another section. He has explained it, and I undertake to say that it will take ten years of decisions in the Supreme Court to explain the explanation, and then you will not know what the law means, only by what the Supreme Court says about it. The Supreme Court will have to construct a revenue Act out of these two sections, and I can see no earthly reason for adopting such complicated and rambling sections as these, in order to arrive at the simple proposition, that each citizen should contribute a certain portion of his property to the support of government. Now, sir, I undertake to say, and they may charge me with what they please, I say that the subject of taxation is not an intricate, difficult, high-heeled thing, that no man can understand. The time was, when the king wanted rations for his household or his army, he rode forth among his subjects and told them he wanted some provisions, and they sent it to him. We have not much improved upon that system. Now, when the State wants part of the citizens' property, for the purpose of paying the expenses of government, she sends her Assessors forth to find what they have in their hands, and to take a portion thereof, and that is all there is to it. We only get into difficulty when we undertake to pry into private transactions, and keep a book account between every debtor and creditor in the State. Now, let us vote down these two propositions. Let us establish a plain, simple plan of assessing taxes, by assessing every dollar we find in a man's hands—land, goods, and money—and there stop.

A VOICE. And mortgages.

MR. REYNOLDS. And mortgages, the gentleman says. There you have departed again. There you are at sea again. The gentleman says, and mortgages. Well, suppose we do tax mortgages? First, we tax the land, next, the mortgage. Well, this is done under the Boggs amendment, by allowing the debtor to deduct the amount of tax he has paid. By this system you accomplish exactly the same result, and keep the whole business off the Assessors' books. You have none of the expense which will be the result of this system, and the whole thing will be kept off the Assessors' books. I hope we will assess property wherever we find it, and not make any deductions. If I get an opportunity I shall offer a substitute, to that effect, that no deductions shall be allowed on the books of the Assessor. Let that be an arrangement between the parties by law, but not cumber the books with it.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: The section under consideration, as it now stands, strikes me as being, even with the proposed amendment, a little more muddy than it was in its original shape. Section one of the original report prescribes that taxation shall be uniform upon the same class of subjects; and section two reads as follows:

"Laws shall be passed taxing all moneys, credits secured by mortgage, deed of trust, contract, or other obligation affecting property, and credits not so secured, investments in bonds, franchises, and all other properties, real, personal, and mixed, according to their true value in money, except as hereafter provided; but the Legislature may provide for a deduction of debts due to bona fide residents of this State, from credits, except in the case of debts or credits secured by mortgage, deed of trust, contract, or other obligation affecting property. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

Now, suppose the Legislature does not pass any laws taxing certain classes of subjects. Does this Convention wish to leave the whole question of taxation, or the taxation of any particular class of subjects, to the discretion of future Legislatures? If you say, as this article now reads, that taxation shall be uniform upon the same class of subjects, and then say in the next section that the Legislature shall pass laws taxing certain properties, the Legislature could, under the Constitution, regulate the taxation of any specific property by classifying it, and thus tax one class of property disproportionate to others. This Constitution ought to prescribe that all property should be taxed equally and uniformly. This article will provide that property shall be taxed uniformly upon the same classes; hence the Legislature is not obliged to tax all property in the State under this article, because there is no provision in the Constitution anywhere which says that taxation shall be uniform. There is no provision which says taxation shall be equal. True, section one prescribes that taxation shall be uniform upon the same classes of subjects. Therefore, if the Legislature shall pass laws declaring that certain classes of property shall not be taxed, where is the remedy? Because the Constitution nowhere prescribes that taxation shall be equal and uniform. I earnestly recommend this subject to the careful consideration of the Convention.

I wish to say to the gentleman from Sonoma, Judge Johnson, that he will find this question of trying to remodel this section a very grave one. He comes before us with an amendment to section two, which none of us have read, upon a question of the most vital importance to the State, and yet the amendment has not even been printed, so that we could examine it. I think it is impossible to give it a fair examination in this way, without any opportunity of reading it. We are asked to adopt it without that careful examination which is needed. I don't know but what it is an improvement upon the old one. I presume it must be, but it ought to be examined more critically. I do not object to the Johnson amendment as far as relates to solvent debts. I do not believe that paper is money. I do not think a promise to pay is property in itself; but as it does represent value, and as the amount and value of the property it represents can be deducted from the value of land, I do not object to it. But I do most earnestly object to the provision of this article, that taxation shall be uniform on certain classes of property. We are putting it in the power of the Legislature to say that A shall pay taxes on a certain class of property, and B shall pay a differ-

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ent tax on a different class of property. It will prepare the way for the Legislature to say that certain classes of property shall not be taxed at all, if they choose to. And that is just what this Convention does not want to do. Therefore I hope this section will be amended or defeated.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. President: The point made by the gentleman from San Francisco, Mr. Estee, seems to be that under this section the Legislature will have power to exempt certain property from taxation, because the first section there says taxation shall be equal upon certain classes of subjects. I think if you give it a fair construction, the language will not bear any such interpretation, and will give the Legislature no such power. The section says: "Laws shall be passed taxing all moneys, credits secured by mortgage or trust deed, contract, or other obligation affecting property, and credits not so secured, investments in bonds, franchises, and all other property, real, personal, or mixed, according to their true value in money." Now, if laws shall be passed taxing all other property, real, personal, or mixed, according to its true value in money, how can the Legislature escape taxing all other property? It seems to me it is plain as language can make it.

MR. ESTEE. It is because this section prescribes that laws shall be passed that I object. We ought to say here that all property shall be taxed. This says the Legislature shall pass laws; but they may refuse to pass laws; they may say that taxes shall be uniform in certain classes of subjects, and they may except certain classes of subjects from taxation.

MR. MILLER. You cannot establish any system of taxation except by Act of the Legislature. The Constitution does not establish a system of taxation. This objection is a mere quibble on words. If we say that the Legislature shall pass laws taxing all property, it is equivalent to saying that all property shall be taxed. I will not presume that the Legislature is going to refuse to obey the Constitution. It is the very last thing the Legislature would do. Every member of the Legislature takes an oath to obey and support the Constitution, and if they are commanded to pass certain laws, it is presumed that they will do it.

Now, in regard to the first section, that taxation shall be uniform upon the same classes of subjects, I think that is correct. That is copied from the Constitution of Pennsylvania, and it means precisely the same thing as saying that taxation shall be equal and uniform upon the same classes of subjects, because our Supreme Court has decided that these words are synonymous. There is one thing I would like to be informed about, however, and that is what the gentleman means by "investments in bonds."

MR. JOHNSON. Investments in any kind of bonds except United States bonds. The laws of the United States govern that matter, and it is not necessary to mention them.

MR. MILLER. That is money that is paid for bonds. Why not tax the bonds.

MR. JOHNSON. This is a strong term and covers all kinds of bonds. We want to tax only the investments in bonds, and we do not want to include Federal bonds.

MR. MILLER. If there is anything in this section to put it in the power of the Legislature to make any exemptions, I should certainly be opposed to it. But I cannot understand it in that way—I think it is equivalent to saying that all property shall be taxed.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: Since the second section of this article has been stricken out, it seems to me to be absolutely necessary that we should reject the so-called Johnson amendment and return to the old section two, for the purpose of incorporating in this Constitution an express provision that all property shall be taxed. If there is anything that the people of this State hold dear, I had supposed it was that taxation should be equal, and that it should be uniform; that it should rest upon all property. But as this article stands now, we have first the general declaration that taxation shall be uniform upon the same classes of subjects only, thus leaving the Legislature at liberty to cast this burden wholly upon personal property, or wholly upon real estate, or upon any one kind of property they may choose. In regard to the so-called protection afforded by section two, it is manifestly a delusion. It says the Legislature shall pass laws, and gentlemen speak of that as though it were an assurance that they will do so. Now in the present Constitution, which was adopted thirty years ago, there is a provision that the Legislature shall establish a system of county and town governments. We all know that this provision has been a dead letter, for the reason that it was not supplemented by any action of the Legislature. The provision of the old Constitution was that all property should be taxed in proportion to its value, to be ascertained by law. Under that provision it was, in numerous cases, held to be beyond the power of the Legislature to pass any Act exempting from taxation any species of property. That was decided in the case of the People vs. McCreary, in the thirty-fourth California, when an attempt was made to exempt credits. Also, a decision in the thirty-fifth California, to the same effect. But if this section were passed as it stands now, there would be nothing in the Constitution which would prevent the Legislature from exempting certain classes of property from taxation. I think, therefore, that the Convention should not concur in the action of the Committee of the Whole in adopting that section.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. President: I am sorry that I cannot support the proposition introduced by my colleague, Mr. Johnson. I think it is open to the objection urged by several gentlemen, in relation to the power of the Legislature to exempt certain classes of property. In addition to the case cited by the gentleman from Sacramento, I will say that there is a provision in the present Constitution requiring a census to be taken every ten years, but it is a well known fact that the Legislature has always disregarded this provision, and the census has never been taken; now, why may they not disregard this section also? Now, sir, I return to my first love in this Convention. I have the section here which I first introduced in this Convention, polished up and amended, so as to meet the objections that were urged against it, and I do not think the objections which have been urged against this section introduced by my colleague, can be urged against this. I will read it:

"SEC. 2. All property in this State shall be taxed in proportion to its value, to be ascertained as provided by law. For the purposes of taxation, investments in bonds, franchises, solvent credits, secured or unsecured, and everything of value capable of transfer or ownership, shall be considered property. Growing crops, property belonging to the United States or to this State, or any political subdivision thereof, shall be exempt from taxation."

There is a declaration that all property in this State shall be taxed. Then I go further and define what property is, and this, it seems to me, is almost absolutely necessary. We must have a definition of property in this Constitution. I call the attention of the Convention to the fact, that none of the amendments which have been introduced here, none of the sections which have been adopted, define what property is; and that is the very thing which we ought to incorporate in this Constitution. We want to amend and overrule the decision of the Supreme Court. Here is a sentence that includes all property: "For the purposes of taxation, investments in bonds, franchises, solvent credits, secured or unsecured, and everything of value capable of transfer or ownership, shall be considered property." There is a definition of property which includes everything which has value. There are three distinct principles in this proposition: First, it declares that all property shall be taxed; second, it defines what property is; third, provides for the exemption of certain classes of property. It seems to me that is about all we need. There is too much in this article entirely. We do not need more than two or three sections.

MR. JOHNSON. Do you propose to tax mortgages?

MR. MORELAND. Yes, sir.

MR. JOHNSON. Do you propose to tax land also?

MR. MORELAND. Yes, sir. I do not think your proposition will meet the requirements of the times. I believe that all property should be taxed, and in order to get at it, I propose to offer this amendment.

MR. JOHNSON. Suppose there is a mortgage on a man's land, you propose to tax the land and the mortgage too. And then suppose there is a stipulation in the mortgage, that the borrower shall pay the tax on the mortgage, he would be taxed for a great deal more than he is worth.

MR. MORELAND. I propose to insert a section which says that no such stipulation shall be made.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: Any proposition connected with this subject ought to be clear. Sections two and five are not clear. There are not two men to-day upon the floor of this Convention that will agree unanimously upon any provision contained in these two sections. The section in relation to revenue should be so clear and unambiguous that no man can fail to understand what it means. Now, I am in favor of the Boggs proposition, offered by Judge Hale, of Placer. I am in favor of that, because it compels every man to pay taxes on what he is worth, and not a cent more. This proposition of the gentleman from Sonoma, Mr. Johnson, is full of danger. If we cannot agree definitely upon what property should be taxed we had better leave it to the Legislature than to leave it in doubt here. We have not been able, as yet, to agree upon anything intelligent, or anything clear. Now, let us adopt either the Moreland proposition or the Boggs proposition. I have always believed that the revenue of the State should be collected from the wealth of the State, not from those men who are so unfortunate as to be in debt. To illustrate: if a man has a house worth ten thousand dollars and has it mortgaged for five thousand dollars, under this provision he not only has to pay taxes on the ten thousand dollars, but the chances are he will have to pay the tax on the mortgage in some shape or another—thus making him pay taxes on fifteen thousand dollars when he is only worth five thousand dollars.

MR. WHITE. Would not that be the case under the Moreland amendment?

MR. LARKIN. To a certain extent. The Legislature would have power to do that. But it is a clear proposition. But with the other proposition we are left in doubt. Either tax him one way or the other. Let the Convention decide one way or the other. If we cannot decide, let us leave it to the Legislature with the simple declaration that all property shall be taxed. I shall support the Boggs proposition. Failing in that, I shall be in favor of a declaration that all property shall be taxed, and defining what property is, and leaving the rest to the Legislature.

REMARKS OF MR. HITCHCOCK.

MR. HITCHCOCK. Mr. President: I cannot support the proposition of the gentleman from Sonoma, Mr. Johnson. It does not do justice, it seems to me. Let me state a case. Suppose I have ten thousand dollars' worth of real property, and have it mortgaged for say five thousand dollars. That makes fifteen thousand dollars' worth of property in my possession. Now, there is no less property there because it is given as security. If I borrow five thousand dollars without giving security, I have fifteen thousand dollars beyond a doubt. But if I tack a mortgage on to the note, then according to this theory I have only ten thousand dollars. Now, I am in favor of taxing the five thousand dollars, even if it is secured by mortgage, because I think there is just as much property as there was before it was given as security. Therefore, I am in favor of the Moreland proposition. I am in favor of taxing everything that has value, in the hands of the party who holds it.

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REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I hope these various amendments will have the effect of bringing us out of the muddy waters where we can see clearer, and that when all this fallacy is exploded, we will go back to the old system, and say, as we ought to say, that taxation shall be equal and uniform. It is useless to consume time in discussing these propositions. But there is a proposition here to tax Government bonds. The last amendment proposed taxes the interest on these bonds. That can no more be done than you can tax the bonds themselves. You may as well tax one as the other. It is an attempt to evade the law of Congress, which exempts this kind of property from taxation. You cannot tax these bonds, nor can you tax the proceeds of these bonds.

MR. JOHNSON. I ask you whether, under the laws of the United States, we can tax these bonds?

MR. SHAFTER. No, sir.

MR. JOHNSON. Have we not a provision here that the Federal Constitution is the supreme law of the land?

MR. SHAFTER. Yes, sir; and it is folly to dispute it. Now, they propose to put it in here, because they say it can do no harm, as the statutes of Congress will override it. That is the very reason I say that a man of common sense would want to keep it out, and not stick it in there for the purpose of giving offense to the Government of the United States. You may put it in there if you choose to, but I take occasion here to enter my protest against this barefaced attempt to deny the authority of the United States in exempting these bonds from taxation. I have seen too much of this sort of thing, and the gentleman from Los Angeles may call it Black Republican doctrine if he chooses.

Now, sir, this attempt to tax mortgages is a delusion and a snare. If you do tax mortgages the first thing the creditor will do will be to have it fixed in a contract that the borrower shall pay the tax. The only possible good that it will ever do will be to make money lenders take a more active interest in the affairs of State, in order to keep taxes low. This whole scheme, in my opinion, will prove a delusion and a snare.

NOTICE OF RECONSIDERATION.

MR. BIGGS. Mr. President: I desire to send up a notice.

THE SECRETARY read:

"I give notice that I will, on to-morrow, move to reconsider the vote by which the Convention refused to concur in section one of amendment number five hundred and ten, as recommended by the Committee of the Whole."

MR. O'DONNELL. Mr. President: It is impossible for me to vote for this section number two. I do not think there are many lawyers on this floor who understand the proposition. I believe that taxes should be equal and uniform in this State, and that all property should be taxed according to its actual value, providing that no tax shall be levied upon growing crops. All taxes should be equal and uniform.

THE PRESIDENT. The question is upon the amendment to the amendment proposed by the gentleman from Sonoma, Mr. Johnson.

The ayes and noes were demanded by Messrs. Johnson, Hale, Biggs, Kelley, and West.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Herold,	Smith, of 4th District,
Barbour,	Howard, of Los Angeles,	Smith, of San Francisco,
Beerstecher,	Johnson,	Soule,
Bell,	Joyce,	Sweasey,
Biggs,	Kenny,	Swenson,
Condon,	Kleine,	Tuttle,
Dowling,	Martin, of Alameda,	Waters,
Farrell,	Miller,	Wellin,
Freud,	Neunaber,	West,
Gorman,	O'Sullivan,	White,
Grace,	Rolfe,	Winans—34.
Harrison,		

NOES.

Andrews,	Hilborn,	Nelson,
Blackmer,	Hitchcock,	Noel.
Boggs,	Holmes,	O'Sullivan,
Boucher,	Howard, of Mariposa,	Ohleyer,
Brown,	Huestis,	Reynolds,
Burt,	Hughey,	Rhodes,
Campbell,	Hunter,	Ringgold,
Caples,	Inman,	Schell,
Casserly,	Jones,	Schomp,
Chapman,	Kelley,	Shafter,
Cross,	Keyes,	Shoemaker,
Crouch,	Laine,	Shurtleff,
Davis,	Lampson,	Stedman,
Doyle,	Larkin,	Steele,
Dudley, of Solano,	Larue,	Stevenson,
Estee,	Lavigne,	Stuart,
Estey,	Lewis,	Swing,
Filcher,	Lindow,	Thompson,
Freeman,	Mansfield,	Tinnin,
Garvey,	Martin, of Santa Cruz,	Townsend,
Glascock,	McCallum,	Tully,
Gregg,	McComas,	Turner,
Hager,	McConnell,	Vacquerel,
Hale,	McCoy,	Van Dyke,
Hall,	McNutt,	Van Voorhies,
Harvey,	Mills,	Walker, of Tuolumne,
Heiskell,	Moreland,	Webster,
Herrington,	Morse,	Weller,
Wickes,	Wilson, of 1st District,	Mr. President—89.
Wilson, of Tehama,	Wyatt,	

MR. MORELAND. Mr. President: I offer an amendment.

THE SECRETARY read:

"SEC. 2. All property in this State shall be taxed in proportion to its value, to be ascertained as provided by law. For the purposes of taxation investments in bonds, franchises, solvent credits, secured or unsecured, and everything of value capable of transfer or ownership, shall be considered property. Growing crops, property belonging to the United States, or to this State, or any political subdivision thereof, shall be exempt from taxation."

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Sonoma, Mr. Moreland.

The ayes and noes were demanded by Messrs. Wyatt, Moreland, Kelley, Glascock, and Brown.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Hughey,	Schomp,
Biggs,	Hunter,	Shoemaker,
Blackmer,	Kelley,	Smith, of Santa Clara,
Brown,	Keyes,	Smith, of 4th District,
Campbell,	Kleine,	Soule,
Caples,	Laine,	Steele,
Dudley, of Solano,	Larkin,	Stevenson,
Dunlap,	Larue,	Swenson,
Filcher,	Lewis,	Swing,
Freeman,	Lindow,	Tinnin,
Garvey,	Mansfield,	Tully,
Glascock,	McCallum,	Turner,
Heiskell,	McComas,	Tuttle,
Herold,	Moreland,	Waters,
Hitchcock,	O'Donnell,	Weller,
Holmes,	Ohleyer,	West,
Howard, of Los Angeles,	Ringgold,	Wyatt,
Howard, of Mariposa,	Rolfe,	Mr. President—54.

NOES.

Ayers,	Hale,	Noel,
Barry,	Hall,	O'Sullivan,
Beerstecher,	Harrison,	Reynolds,
Bell,	Harvey,	Rhodes,
Boggs,	Herrington,	Schell,
Boucher,	Hilborn,	Shafter,
Burt,	Huestis,	Shurtleff,
Casserly,	Inman,	Smith, of San Francisco,
Chapman,	Johnson,	Stedman,
Condon,	Jones,	Stuart,
Cowden,	Joyce,	Sweasey,
Cross,	Kenny,	Thompson,
Crouch,	Lampson,	Townsend,
Davis,	Lavigne,	Vacquerel,
Dowling,	Martin, of Alameda,	Van Dyke,
Doyle,	Martin, of Santa Cruz,	Van Voorhies,
Estee,	McConnell,	Walker, of Tuolumne,
Estey,	McNutt,	Webster,
Farrell,	Miller,	Wellin,
Freud,	Mills,	Wickes,
Gorman,	Morse,	White,
Grace,	Nason,	Wilson, of Tehama,
Gregg,	Nelson,	Wilson, of 1st District,
Hager,	Neunaber,	Winans—72.

MR. MILLER. Mr. President: I offer an amendment.

THE SECRETARY read:

"SEC. 2. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county, or municipal corporation within this State."

MR. MILLER. Mr. President: That is the section of the old Constitution, with one exception. I believe it is better than any scheme which we will be able to devise here.

MR. TINNIN. Mr. President: If there was anything which induced the calling of this Convention, it was to amend the laws in regard to the taxation of property, and particularly that mortgages should be taxed. Now, this amendment proposes that we shall go back to the old system, under which mortgages are not taxed. If we do this, the Constitution will never be ratified, and we might as well adjourn and go home.

ADJOURNMENT.

MR. HOWARD, of Los Angeles. I move we adjourn.

Carried.

And at four o'clock and fifty minutes P. M. the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND THIRTY-THIRD DAY.

SACRAMENTO, Friday, February 7th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

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PRESENT.

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

ABSENT.

Barnes,	Evey,	Porter,
Barton,	Fawcett,	Prouty,
Berry,	Finney,	Pulliam,
Dean,	Graves,	Reed,
Dudley, of San Joaquin,	Moffat,	Walker, of Marin,
Eagon,	Overton,	Wilson, of 1st District.
Edgerton,		

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Evey.

Indefinite leave of absence was granted Messrs. Walker of Marin, Barton, and Moffat.

THE JOURNAL.

MR. HUESTIS. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

The motion prevailed.

RECONSIDERATION—TAXATION.

MR. BIGGS. Mr. President: I gave notice yesterday that I would move to reconsider the vote by which the Convention refused to concur in the amendment of the Committee of the Whole to section one of the article on revenue and taxation. I now make that motion. This question of revenue and taxation is one of the most important questions that have come before this Convention, and if we cannot get what we want we must take the next best thing. We find that nearly every gentleman has an opinion of his own in regard to it, and I am in hopes that there will be no objection to reconsidering this so that we can be more enlightened.

THE PRESIDENT. The question is on the motion to reconsider the vote by which the Convention refused to concur in the amendment of the Committee of the Whole to section one of the article on revenue and taxation.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: There are some reasons which I wish to present to this Convention why this should be reconsidered, and I will not take up the time of the Convention but a few moments. I shall only call the attention of the Convention to the syllabuses of some of the decisions of the Supreme Court of this State relating to this subject. In the twelfth California it is held that the only limitation upon the taxing power of the Legislature is the provision for equality and uniformity. That was the only limitation, and as it is well understood that the Constitution is only a limitation of power, the Supreme Court held that these two words were the only limiting words in the Constitution, and, therefore, they sustained the assessments referred to in the decision. The second section leaves the whole question of taxation to the discretion of the Legislature. It merely says that the Legislature shall do so and so, but does not compel them to do it. The whole question of sovereignty, the right of taxation, is left entirely with the Legislature, and because we say that we shall levy this tax it is not binding upon them. There is no power behind them that can make them do it. You mandamus them. They represent a branch of the government. They have the exclusive control of this subject. Again in the thirty-fourth of California, in the People v. McCreery, page four hundred and thirty-two, the Court held:

"The power of the Legislature over the whole subject of taxation, including the property to be charged, the amount of the tax, the mode of levying, assessing, and collecting it, etc., is as ample as over any other matter that is a proper subject of legislative action. The provisions of section thirteen, article eleven, of the Constitution, are limitations, and not grants of power; but as limitations, are, according to their terms, mandatory upon the Legislature."

In the same decision they say:

"Under the provisions of section thirteen, article eleven, of the Constitution, to wit: 'Taxation shall be equal and uniform throughout the State,' and 'all property in this State shall be taxed in proportion to its value, to be ascertained as directed by law;' held, first, that by the words 'all property in this State,' is meant all private property, or all property other than that belonging to the United States, or this State, or that which is public property; second, that the words 'taxation shall be equal and uniform throughout the State,' relate to taxation of property, and that the Legislature has no power to exempt any private property in this State from taxation."

That is what I took occasion to say to this Convention yesterday. You leave these words out, and the Legislature would have the power to exempt any property in this State from taxation that they desire to. The only means of meeting that question fairly and squarely, is to put these limiting words in, namely, that taxation shall be equal and uniform throughout the State. I appeal to this Convention not to adopt any new terms, unless these new terms are to be very beneficial to the people of the State, and unless these new terms will remedy some evil. I commend to this Convention the adoption of the old words, those that we have received an interpretation of, and the meaning of which is familiar to every lawyer in the State. Adopt section one as reported by the Committee of the Whole, and then you can adopt section two and section five, as reported by the Committee of the Whole, or any other section you wish with safety; because, upon the question of uniformity and equality rests the whole limitation to the power of taxation. Don't we want taxation to be equal and uniform throughout the State? Don't we want every piece of property taxed, and that it shall be taxed alike? Do you want to place yourself in a position where your neighbor will be taxed in one manner and you in another? Don't you want these limitations upon the taxing power of the State? I commend this to your judgment, and I hope that the Convention will reconsider the vote by which we refused to concur in the amendment to section one as reported by the Committee of the Whole.

MR. ANDREWS. I desire to ask the gentleman if he does not consider the words equal and uniform inconsistent with the taxation of solvent debts?

MR. ESTEE. Not a bit of it. The decision in the case of the People vs. The Hibernia Bank does not rest upon that proposition at all, as the gentleman knows.

MR. ANDREWS. I know that it has been claimed upon this floor that it does.

MR. VAN DYKE. I will call the attention of the gentleman to two decisions directly on that point, that solvent debts could be included as property: The People v. Eddy, 43 Cal.; Savings and Loan Society v. Austin, 46 Cal.

MR. ESTEE. I can see that this Convention is in favor of taxing solvent debts. I am willing it should be done, but I claim that this is limitation upon the taxing power. I concede the taxation of solvent debts to this Convention.

MR. ANDREWS. A concession that does not come from his heart. Not one single gentleman who is advocating the striking out of these words will get up here and say that it comes from his heart; that he believes in the taxation of solvent debts and of mortgages.

MR. ESTEE. I want to know what that has got to do with the proposition to reconsider this vote?

MR. ANDREWS. You say that you can see that this Convention is in favor of the taxation of solvent debts. We wish that this system of taxation shall be a system built up by its friends—not friends from necessity, but friends because they believe that it is right. If I understand the Hibernia Bank decision, it is inconsistent with the taxation of solvent debts, and I believe that is what was claimed by the gentleman from Sacramento, the Chairman of the Committee on Revenue and Taxation. This question stands here now between those who are in favor of the taxation of solvent debts and those who are opposed to it. Those who are in favor of the taxation of solvent debts should refuse to reconsider, and I hope that this Convention will refuse to reconsider.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: On yesterday we struck out section one, which provided that taxation should be equal and uniform throughout the State. By so doing we virtually declared that we did not desire that taxation should be equal or uniform. The result of our action was that we reinstated section one as reported by the Committee on Revenue and Taxation, that all taxes shall be uniform upon the same class of subjects. Then, sir, it follows that while on the one hand we ignore the principle of equality at large, on the other hand we accept it to the extent that it is to apply to the same class of subjects. Now, sir, if that proposition is sustained there is no possibility of telling at this moment to what extent of mischief it may run. Suppose that there are twenty thousand pianos in this State, no two of them are of equal value—one may be worth ten dollars and another one thousand dollars. Yet every piano must be assessed at the same figure. Take cattle and horses. A race horse worth twenty thousand dollars must be assessed the same as a

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cart horse worth one hundred dollars. Where is this to end? It runs through the entire range of personal property in every department. This principle cannot be sustained. If it be claimed that you can classify the subjects, it will not work. In the case of horses, you cannot classify them as workhorses and as thoroughbreds. Why, sir, take thoroughbreds, there is the utmost diversity of value among them. You must tax them according to their intrinsic value, and in every degree in which you depart from that principle you depart from anything like consistency or the attainment of equality and right. This thing is thoroughly noxious and corrupt. The people will reject and repudiate it; or if they adopt it, they will curse the hour when we imposed it upon them. I say it is in the course of right enactment for us to reconsider and adopt what we yesterday rejected after having spent a week in its adoption. We build up a fabric with painful care, and we destroy it in an hour. What is to be the result when we reach the final adoption of the Constitution here in reference to its stability, to its intrinsic merit, if we change every day and every hour? What faith can we ourselves have in the work we present to the people? Let us go back to what the committee adopted, or rather, let us go farther, and adopt the amendment offered by the honorable member from San Francisco to the second section, which is in the language of the present Constitution. When that comes up I shall ask the opportunity of saying something on that subject. In the meantime let us revoke the imperfect and improper action of yesterday.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: I consider it of little consequence whether this motion is reconsidered or not. I do not believe that there is any use for section one any way in this article in the form in which it is, and those gentlemen who desire this reconsideration can vote for the amendment of the gentleman from San Francisco here, and then they have got equality and uniformity just exactly in the language in which they want it. This Convention has not been brought to a vote upon this first section, and when it is it can be stricken out, and it need not stand as any bugbear in the mind of any man here. Now, as to the effect of these words uniformity and equality, I understand that if a proposition is adopted here saying that all property shall be taxed in proportion to its value, that that as effectually proclaims uniformity and equality as the expression that taxation shall be equal and uniform. Now, it was denied that the Hibernia Bank case turned upon that language. I am not a lawyer, and it may seem wrong that I should question the assertion, for a moment, of a lawyer upon that matter, but if I can read, the decision of that Court was, that choses in action are not property in the sense in which that word is used in article eleven, section thirteen. Now, why? For the reason that such property is not capable of being rated equally and uniformly with other property, as prescribed in the section; that was the reason upon which the decision was rendered. The gentleman has quoted from the decisions of the Supreme Court here this morning, from away back, several years, up to the present time. Now, I am not a lawyer, and have not read the decision of the Court, but I have heard it stated by eminent gentlemen on this floor, that the Courts have opposed the taxation of these credits. That is what they have done, and they are just as likely to do again. The trouble with the Constitution is this: the Constitution says it shall be equal; there is a chance right there for any shrewd attorney to raise a question, when any man who wants to get rid of paying his taxes employs him. He immediately tries to ascertain that there has been some inequality somewhere, and upon that technical term he seeks to get out of paying his tax.

MR. WINANS. Does he not get an idea that a wrong is inflicted upon him where none exists, from a suspicious agriculturist, before he goes to the shrewd attorney?

MR. DUDLEY. The gentleman seems to intimate that I belong to a suspicious class of agriculturists. It is quite possible that I do. I certainly belong to the agricultural part of the community of this State, and I belong to a class of people who have in the past paid their taxes. They have seen gentlemen wearing silk hats, and broadcloth clothes, and driving carriages, that utterly shirk taxation. They have sought by various means to get that class of individuals to contribute something towards the support of the Government, but under the rulings of the Courts, under our present Constitution, they have successfully evaded the payment of any share of the expenses of this Government. The gentleman may feel sensitive, and he may tremble to think that it is barely possible that this Convention of suspicious agriculturists and communists, as they have been termed, may succeed in getting something out of them. I hope that we will succeed in getting something out of them. I do not know as it makes any difference about this reconsideration, because the proposition submitted by the gentleman from San Francisco is here pending, and those who favor reconsideration can simply vote aye upon his proposition.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope the Convention will not recede from the decision which they took yesterday, and follow the dictates of the Record-Union. I hope that this reconsideration will not be had. It prevents the people of this State from putting one hundred million dollars under taxation that now escape it. That is just what it amounts to. That is just what these words are aimed at. I see it, sir; I know the object of it, sir. The gentleman from San Francisco expressed it when he answered the question of the gentleman from Shasta. He is not in favor of it, but says he will concede it. They want to put words in your Constitution by which they can walk into the Supreme Court and defeat it. It brings here just what you are trying to get rid of—Judge-made law on the subject of taxation. Armsfull of decisions can be made up on this very language, defeating all endeavors on the part of the people to bring to their public duty those who are escaping from them. I will not reargue this proposition. When you have said that all property shall be taxed, you have said enough. But I would like to know how it happens that the twenty odd States of this Union where they have worked at this question of taxation so long, have left these words out. How is it that we just now happen to be communists, because, forsooth, we follow only the footsteps of older States, if not older men, who have wisely left these words out of their Constitutions? Now, sir, I hope that the motion to reconsider will not prevail.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. President: I will say, so far as I am concerned, that in moving the amendment which I did last night, I was not governed by any desire to avoid taxation of mortgages and solvent debts. I have here, prepared by the gentleman from Los Angeles, General Mansfield, a proviso to the section which I moved last night, in these words: "Provided, that mortgages and solvent debts shall be considered property for the purposes of taxation." Now, when the proper time comes, I propose to add that to the section which I offered last night as a substitute, and there is no need of the first section at all. If we adopt the language of this second section, as offered by myself, that taxation shall be equal and uniform throughout the State, it can be put into one section. I make this explanation to show that there is no intention upon my part to avoid the taxation of mortgages and solvent debts.

MR. HERRINGTON. Do you make any distinction between solvent debts and mortgages? Do not solvent debts include mortgages?

MR. MILLER. It is only to make it explicit and clear. Section five can be amended so as to give a rebate against solvent debts the same as mortgages.

MR. WINANS. When you say solvent debts shall be taxed, do you mean without making a deduction?

MR. MILLER. I say that section five can be so amended as to give a rebate in cases of other solvent debts.

MR. WINANS. I do not think there is an objection to that on the part of any member of the Convention.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I hope this motion to reconsider will not prevail. It seems to me that it would be taking a step backward in this matter. Now, sir, this matter was fully argued, and I undertake to say that the gentleman from San Francisco, Mr. Estee, is mistaken about the decision in the Hibernia Bank case. That the whole decision is based upon the question of equality and uniformity is too plain for argument. They say:

"That causes of action are dependent on too many contingencies to be capable of appraisement which shall accord with any rule of equality or uniformity of value, is too plain for argument."

That is what they say. They say further:

"The Constitution provides that no property, as property, shall be taxed except such as is capable of a valuation by the Assessors, which shall be ratably equal and uniform with that affixed to all other property."

Why, sir, they were discussing the constitutional principle. That whole argument is based upon the provision of section thirteen, of article eleven. Some dictum creeps in. It is understood that the Supreme Court has decided that it is not property with reference to the provision in the Constitution which they were discussing. We have got to take the whole decision in order to interpret and consider it fairly. We have got to see the basis upon which they act. They start out with an interpretation of that constitutional provision, and their whole argument is based upon it. Now, as far as taxing credits is concerned I read an argument by the President of this Convention, in the case of the Savings and Loan Society v. Austin, 46 Cal., wherein he cites that in twenty-seven States of the Union credits are taxed. Now, where does this opposition come from? Ask any member here whether he is in favor of taxing credits and mortgages, and if he is against it you can see very soon where he stands. That is the test to apply to them. No person who has come here in pursuance of the verdict of the people that these solvent debts or credits shall be taxed, will insist that these words "equal and uniform" shall be in. They have made the trouble heretofore, and they will make the trouble hereafter if we retain them. The Supreme Court will still construe that word "equal," and they will say that the local Assessors cannot secure equality in these cases. That is what they will say. This same trouble will be precipitated upon us again unless we eliminate these words, and leave the section to direct that property shall be taxed according to its true value in money. That is all we want, and I do hope that this motion to reconsider will not prevail. I know it is insisted in the Record-Union that these words "equal and uniform" should be in. I know that men whose sympathies are with capital would like to have these words in, but I maintain that it is the verdict of the people of this State that these mortgages and solvent credits shall be taxed, and that we should not precipitate ourselves into the difficulty in which we found ourselves when the decision in the case of the People v. The Hibernia Bank was made.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: I hope the motion to reconsider will not prevail. These words that it is proposed to reinsert by a reconsideration in this case, have been a very Pandora's box of evil upon the subject of taxation in this State to the poor men of the State. It has been the very thing that has exempted the millions of concentrated capital in the hands of the capitalists of this State from taxation, and leaving it to fall upon the poor farms and the poor implements and the poor stock of the farmers of this State. In every case wherever there was any plea by which to get around and to favor taxation as against the poor, there it is that this equality and uniformity has been invoked upon

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all occasions. And at last, as it would be seemingly too absurd to say that a man worth a million of dollars, having it invested in the best security in the world, having it secured upon real estate, having it so fixed that no contingency can deprive him of his wealth, having it placed in that position that the whole government and the people thereof are pledged for its payment, and then to decide that this was not property, it was too bold, and the Supreme Court could not do it, and they dodged behind equality and uniformity and let out taxation upon the subject of solvent debts. I do hope that this Convention will not go back to that. Now to reconsider and to put those words in, and put them in the shape of the case of the Hibernia Bank, is for the people of the State of California to vote that that decision is correct; that capital must not be taxed; that the poor men must be laborers; that the poor men must be hewers of wood and drawers of water for the capital of this State for the balance of their lives, uncomplaining and without the right of complaining, having themselves had an opportunity to vote upon it. I am not here for the purpose of even authorizing them to have a vote upon it. They have sent me here for the purpose of seeing that that was not the law any longer, but that mortgages should be taxed because they were property. I am here for that purpose. I am here to say that your solvent debt, secured by mortgage, is property and to tax it; not to take all the man's land that it is secured by, but to tax the mortgage and tax the solvent debt; to tax it as property, to tax it as you would a horse or a cow, and go on and not ask about anything in connection with it; but tax it as property alone; not undertake to settle all the difficulties between neighbors all over the State with reference to property. It is said you cannot do it—that you cannot tax the rich man. Well, if you could not they would not be here whining the way they are at a law that don't affect them. A law that don't amount to a hill of beans they pay no attention to. The laws that are mere sop they do not fight. They can be taxed. It is said that they will increase the interest that much. Do you understand that money is loaned on the principle of an eleemosynary institution? Now, if any delegate in this Convention is that soft he ought to poultice his head with milk and mush, rest one night and get up the next morning and go home to his constituents and resign his position, for he is unworthy to represent anybody, even himself. Talk about not being able to tax them! Didn't you tax them? Didn't they then fight the Legislature to get out of it, and could not do it? Didn't they then take after the Supreme Court, and dog it from term to term, until they got it reversed by a decision of the Supreme Court?

That is the position we are in. And now we want to restore it back to the sovereignty of the legislative power so that the legislative power shall be able to say what shall and what shall not be taxed, if necessary. If you must have a sovereignty in the government, that sovereignty should be the legislative power and not the judicial power. I want the subject of taxation to rest with the Legislature. They are the party to exercise that right. They are the men to say what is property and what is not property. The idea of a Supreme Court letting out all that vast concentrated capital of a mighty State upon the idea that it is not property. And then if that will not do, if it is too absurd, to say that it cannot be taxed under a uniform rule and then let it out. I want the Legislature to have power so that if it cannot hit it one end it can the other, and if it cannot attack at either end it can in the middle.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I do not see how in the world the question whether solvent debts should be taxed has anything to do with the question as to whether or not taxation shall be equal and uniform. If this Convention desires to tax debts, they can easily say so. The question is whether debts on certain terms are property for purposes of taxation. Now the Supreme Court has said that they are not. It is the intention of this Convention to put into this Constitution that debts are property, and that will end that fight. Therefore that question is not involved at all in the broader question whether or not taxation shall be equal and uniform. Now, sir, it seems to me that one of the objects of the Constitution is to limit the power of the Legislature in a few particulars in which it ought to be limited. I am not in favor of limiting the power of the Legislature to any very great extent, but there are two things that are necessary in order to protect private rights; one is that all general laws shall be uniform in their operation, and the other is that taxation shall be equal and uniform. Without these two safeguards there is no protection whatever for individual rights. The Legislature, sir, without these two propositions, may go to work and pass an oppressive law that affects one class, and consequently the theory of our government is that legislation shall operate upon the people as a whole, and if the Legislature does anything wrong or passes any oppressive measure, it must be felt by the whole community—that they shall not have power as the government did in England at one time, to take up a man without any form of law, and put him into the tower. We want such a limitation of the power of the Legislature so that if it does any wrong that wrong shall fall upon all alike, and then all will see that it is rectified. But we do not want to give the Legislature the power through this sovereign right of taxation to put an outrage upon you and I, and half a dozen others, and let the balance of the State go free. That has been the theory of the Constitution, that taxation must be equal and uniform. If it is not so the Legislature may throw all the taxation upon land, or upon the farming interest, or upon some other class of property. They may pass laws which are onerous to one class of people and which do not affect the other at all. The very theory of taxation is that it must embrace all, that all property must be taxed and that taxation upon all property must be equal and uniform. Now, when you come to the question as to whether solvent debts and growing crops shall be taxed, the question is, shall they be considered property? I do not believe that growing crops should be considered property, neither do I believe that a solvent debt is property for the purpose of taxation. If this Convention believe that a promise is property, they can say so and that gets rid of that trouble. But the principle underlying all is the proposition that these laws of the Legislature must be general; whether they are good or bad, they must affect all; that the Legislature cannot pick out one man or one class and throw all the burdens upon him or upon that class, but it must affect all. When you strike out that from the Constitution you strike out the greatest safeguard to private rights that there is under the American system of government. I hope that the Convention will reconsider this matter and put into the Constitution the general principle that taxation must be equal and uniform, and then they can determine whether they are going to declare that debts are property or not.

MR. HOWARD. Mr. President: I do not see the use of consuming the time of this Convention on this motion. It strikes me the proper place to debate this question is on the proposition of General Miller. I therefore move the previous question.

Messrs. Tinnin, Freud, Brown, and Moreland also demanded the previous question, which was ordered by the Convention.

Upon the motion to reconsider, the ayes and noes were demanded by Messrs. Estee, White, Grace, Joyce, and Doyle.

The roll was called, and the Convention refused to reconsider by the following vote:

AYES.

Belcher,	Laine,	Rhodes,
Biggs,	Larue,	Rolfe,
Boggs,	Lewis,	Schell,
Boucher,	Mansfield,	Shafter,
Burt,	Martin, of Alameda,	Shurtleff,
Chapman,	Martin, of Santa Cruz,	Stevenson,
Charles,	McComas,	Stuart,
Cowden,	McConnell,	Terry,
Crouch,	McFarland,	Thompson,
Estee,	McNutt,	Townsend,
Freeman,	Miller,	Vacquerel,
Glascock,	Mills,	Van Dyke,
Gregg,	Noel,	Van Voorhies,
Hall,	O'Donnell,	Weller,
Hunter,	Ohleyer,	Winans,
Inman,	Reddy,	Mr. President—49.
Jones,		

NOES.

Andrews,	Heiskell,	O'Sullivan,
Ayers,	Herold,	Reynolds,
Barbour,	Herrington,	Ringgold,
Barry,	Hilborn,	Schomp,
Beerstecher,	Hitchcock,	Smith, of Santa Clara,
Bell,	Holmes,	Smith, of 4th District,
Blackmer,	Howard, of Los Angeles,	Smith, of San Francisco,
Brown,	Howard, of Mariposa,	Soule,
Campbell,	Huestis,	Stedman,
Caples,	Johnson,	Steele,
Condon,	Joyce,	Sweasey,
Cross,	Kelley,	Swenson,
Davis,	Kenny,	Swing,
Dowling,	Keyes,	Tinnin,
Doyle,	Lampson,	Tully,
Dudley, of Solano,	Larkin,	Turner,
Dunlap,	Lavigne,	Tuttle,
Estey,	Lindow,	Walker, of Tuolumne,
Farrell,	McCallum,	Waters,
Filcher,	McCoy,	Webster,
Freud,	Moreland,	Wellin,
Garvey,	Morse,	West,
Gorman,	Murphy,	Wickes,
Grace,	Nason,	White,
Hager,	Nelson,	Wilson, of Tehama,
Harrison,	Neunaber,	Wyatt—79.
Harvey,		

SECTION TWO.

MR. MILLER. Mr. President: I ask leave to add a proviso to the amendment I offered last night, which reads as follows: "Provided, that mortgages and solvent debts shall be considered property for the purpose of taxation."

THE PRESIDENT. If there be no objection the gentleman will be permitted to modify his amendment. The Secretary will read the amendment as modified.

THE SECRETARY read:

"SEC. 2. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value, to be ascertained as directed by law, except growing crops and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State; provided, that mortgages and solvent debts shall be considered property for the purposes of taxation."

MR. MCFARLAND. Mr. President: I object to the latter part of that amendment.

THE PRESIDENT. The objection comes too late.

MR. MCFARLAND. It puts in there two entirely distinct propositions.

MR. BARBOUR. Mr. President: I rise to a point of order. This amendment contains two independent propositions, one of which the Convention has just rejected.

THE PRESIDENT. The point of order is not well taken.

MR. BARBOUR. I call for a division of the question.

THE PRESIDENT. It cannot be divided.

MR. MORELAND. Is a motion to strike out any part of the amendment in order?

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THE PRESIDENT. No, sir; there is an amendment to an amendment already.

MR. MORELAND. I want to strike out the first sentence. If I can do that I would support it.

MR. WINANS. Mr. President: I would like to ask the honorable member from San Francisco who offers this amendment if he will not accept an addition thereto, in these words: "Deducting therefrom debts due to bona fide residents of this State."

MR. MILLER. I have no objection to it.

MR. HITCHCOCK. I object.

MR. STEDMAN. I object.

THE PRESIDENT. It cannot be accepted if there is an objection made to it.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope that this will not be adopted. I think the Convention has, by a refusal to reconsider the vote taken yesterday, passed upon that question of equal and uniform, as presented in this amendment. It sounds well, but in the first place no one will contend that taxes are equal, no matter how much we may strive for it. As to their being uniform, they cannot be uniform, because that means "one in form," and we have at present provided for more than one form of taxation. We have provided that there may be an ad valorem tax, and we have provided that there may be an income tax if the Legislature so provides. We have already the poll taxes, and they are not one in form and cannot be, and what is the use of saying so? It is just as well to say that all property in the State shall be taxed at its full value in money, or in proportion to its value, and that will come as near uniformity and equality as can be. The whole question turns upon the taxation of credits. That is the point of resistance in this whole struggle, and the majority of this Convention, I think, have determined that they should be taxed. The only question, then, is, how shall they be taxed? We are attempting to tax them as we tax all other property, and we find ahead of us all kinds of difficulties in arriving at that taxation. Now, sir, I know that it is a dangerous piece of business in this Convention to bring in another amendment. I think the amendment man has been heard from as much, perhaps, as the members of this Convention are willing to listen to; but there is another way in which we might possibly arrive at the taxation of these credits, if this Convention should see fit to adopt it. Whether it is the correct theory or not, I am not able to determine, but I believe that it is in some degree a solution of the difficulty. Now, sir, there is no difficulty in regard to the tangible, visible property. It can be found; it can be taxed in proportion to its value. Now, then, if we can put that in one class and tax it in that way, and then take these other evidences of indebtedness—which are really property, because they have a value, and that value can be used for all purposes that any other value can almost—if we can find a way to tax these, not being one in form with the other subjects of taxation, we shall reach them and tax them. By so doing we shall increase the assessment roll and decrease the rate per cent. upon the visible, tangible property. Then, it seems to me, we have accomplished something.

Now, sir, we have provided, in the very last section of this article, that the Legislature may impose an income tax, and I think it just. I think it is the only way in which we can reach a large amount of property that ought to pay taxes. Now, sir, at the risk of falling into bad odor in this Convention, I will venture to read a substitute for section two, which I shall offer if an opportunity comes—which I hope it will—and I believe this is a proposition that has not yet been presented in this form:

"All property in this State, excepting credits, whether secured or unsecured, growing crops, property belonging to the United States, or this State, or any county or municipal corporation within this State, and property exempt from taxation under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The Legislature shall provide for a tax on incomes derived from all interest bearing credits, and may, in its discretion, provide for an income tax to be assessed to, and collected from, persons, corporations, joint stock associations, or companies resident or doing business in this State, in such cases and amounts and in such manner as shall be prescribed."

Now, sir, it seems to me that in that way we shall get a tax upon property in this State. Then the Legislature can provide for any tax that will reach the corporations, joint stock associations, or any companies that are doing business in this State, whether they are residents or not. It seems to me that by this means we shall arrive at one very excellent conclusion, and that is, that having taxed all the tangible property in this State, we then tax the income upon these interest bearing credits, and by that means reduce the rate per cent. upon a tangible property that has heretofore been paying all the taxes. I hope to have an opportunity to offer this, and I hope that this Convention will give it such consideration as the lateness of the hour in which it is proposed will permit.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. President: I propose to say a word, but I am too hoarse to talk. I trust that the amendment offered by the gentleman from San Francisco will prevail. It is substantially the present Constitution, with such amendments as the exigencies of the case now require. Nor do I think it open to the objection of the gentleman from San Diego, that it prescribes an absolute uniform rule; certainly not, according to his definition. I do not think he can find any schoolma'am in San Diego who will agree with him in that definition. We had no trouble with taxes in this State until the Supreme Court made its somersault in the case of the Hibernia Bank, which is about as huge a specimen of judicial ground and lofty tumbling as the whole judicial records of the world can produce. Until that time the rate of taxation was perfectly easy. Everything was taxed; all credits were taxed. Until that remarkable decision was ushered into our law books we had no difficulty. Now, this amendment restores the old law, with the declaration that taxes shall not only be uniform, but that mortgages and solvent debts shall be taxed. I presume we are most of us in favor of that proposition; at least I am, and I understand that the majority of this Convention is.

MR. GRACE. Do you think we could enforce an income tax under that?

MR. HOWARD. Yes; the eighteenth section fixes that. The Supreme Court has settled the most of the propositions in relation to our tax system, outside of the principle that credits are not property for the purposes of taxation; therefore there is a propriety in adhering to the old rule, with a provison added that credits are property and shall be taxed. Now, there is no doubt of the power of the Legislature to tax credits. I shall read from Cooley on Taxation:

"It has never been held incompetent, under this provision, to tax, as personal property, contracts for the payment of money, or which have a money value, and the right to do so may be assumed."

I am sorry that my friend, Judge McFarland, has overruled Judge Cooley on this point.

MR. MCFARLAND. I never said that the Legislature had not the power. They have the power to tax anything, unless limited by the Constitution.

MR. WYATT. What power has the Legislature now to tax debts or credits, under the decision in the Hibernia Bank case?

MR. HOWARD. None, unless that decision was overruled. But I doubt whether there would ever be found another Supreme Court in the universe that would make that decision. I read also, for the benefit of the gentleman from Marin, from the twenty-first Vermont, in the case of Catlin v. Hull:

"Debts due from solvent debtors, upon promissory notes, are personal estate, within the statutes of this State.

"In construing statutes, the rule is to ascertain the intent of the Legislature, which is to be gathered from the language used, taken in connection with the subject-matter and having reference to all that is said upon the subject.

"One of the objects which the Legislature intended to effect by the statutes of October thirtieth, eighteen hundred and forty-four (Acts of eighteen hundred and forty-four, page eight), was to make all property within this State subject to taxation here, even though it belonged to persons residing out of the State, and the property is actually managed here by some person other than the real owner. And the terms 'held in trust,' as used in that statute, were intended to include all property which is situated permanently here, under the control, management, and direction of any person, for the use and benefit of the owner."

That is almost precisely the statute which was claimed to be unconstitutional in the case of the Hibernia Bank:

"Each sovereign State has the power to tax all persons or property within its jurisdiction."

Mr. Cooley also states the principle to be in relation to exemptions, that prima facie the property is taxable. He says that is the rule, and that property excepted must be excepted in terms and expressly, and the exception is strictly construed and does not extend beyond the express language used. That is the rule, and settled by all the cases. Now, the gentleman says we have no right to tax United States bonds. Nobody has proposed here to tax United States bonds. The report does not propose to tax United States bonds. It does not propose to tax anything which the law exempts; and if the Act of Congress exempts the bonds, the bonds are, of course, exempt. But it does not except the income upon the bonds, and under the eighteenth section the Legislature would have the right to impose an income tax, because an income tax goes to everything, from whatever source the income is derived. And I am fully borne out by cases which I might easily refer to. Therefore I am content that that should be left to the Legislature.

MR. CASSERLY. The bond is the principal, and it cannot be taxed; nor can the interest on that bond be taxed.

MR. HOWARD. Yes. That is precisely the language of this case to which Judge Cooley refers. The income is not excepted in terms, and the income may be taxed; but that is a question that will arise only when the Legislature imposes a tax.

MR. CASSERLY. It occurred to me that the main thing, the bond being privilegd, that the dividends of the bond were privileged also.

MR. HOWARD. I disagree with that idea. The income is not exempted unless the Act of Congress expressly stated that the income should not be taxed.

MR. CASSERLY. My object was to ascertain your idea because we do not wish to entangle ourselves in a controversy about the United States bonds.

MR. HOWARD. Not at all. We do not propose to tax any thing that the Act of Congress exempts. As to the propriety of taxing credits I do not propose to detain the Convention with any comment. I shall ask the Secretary to read two or three paragraphs of Professor Walker in his learned book on the "Science of Wealth," commencing on page three hundred and thirty-seven.

THE SECRETARY read:

TAXATION OF CREDITS.

"It has sometimes been maintained that credits ought not to be taxed, but all assessments made upon values, or property, personal and real. Taxes, it has been argued, ought not to be laid upon persons, but upon that out of which they can alone be paid; viz., property. But credits are taxed as well as values. A holds a farm worth ten thousand dollars mortgaged to B for five thousand dollars. A pays taxes upon the whole valuation, and B upon five thousand dollars, as money at interest. A, it is said, is doubly taxed. This is a practical question, that has puz-

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zled legislators in every age and country. Let us therefore carefully examine it. Suppose A and B aforesaid form an entire community, and that the whole tax of one hundred and fifty dollars is imposed on property. The whole valuation will then be ten thousand dollars (A's farm), and the rate one and a half per cent, which A pays, and B goes untaxed. We will now change the principle, and have both property and credits taxed. The valuation will then be A's farm, ten thousand dollars, and B's money at interest, five thousand dollars; total, fifteen thousand dollars, and with the same amount to be assessed (one hundred and fifty dollars), the rate will be one per cent, of which A pays one hundred, and B fifty dollars. So, then, we discover that A is not doubly taxed, as assumed, but at the worst pays only twenty-five dollars, or one third more than his share. Such must, in principle, be the result of this kind of taxation, taking a whole community together. All the amount taxed upon credit is so much relief to taxation upon property. This seems to be clear; and the justice of the thing is established by the fact that A bought his farm knowing that it would be subject to a full taxation, and bought it cheaper, as we have shown in another place, on that account. B on the other hand, accepted his mortgage on the same ground, knowing it would be subject to tax on the common valuation. Is either party then wronged?

"But perhaps another reason may be given why A should pay taxes upon the whole value of his farm; viz., that, having the usufruct of the whole, he is entitled to all the profits on the farm. 'But he don't own the whole of the farm.' True, that is his misfortune; if he did, he would obtain a larger amount of net profits; but his obligation to pay tax on the whole is not impaired, because he has the use of a part of B's capital. As the owner of the farm, A has a chance for all the profits that can made from the whole; while, by the taxation of B on the mortgage, the farmer saves a part of what he would otherwise pay in taxes. One pays taxes for the profits of business; the other, for the income on his capital.

"In this case we find another very clear illustration of the correctness of the income tax policy. If there were no other tax than upon income, the matter would stand thus:

A's income from his farm	$900 00
He deducts the interest he pays B	300 00
A pays tax on his net income of	$600 00
B's income is taxed upon	300 00
Total income to be taxed	$900 00

"Amount to be raised, one hundred and fifty dollars. Of this, A will pay one hundred dollars and B fifty; and there would be no question as to the justice of the system by which both were thus taxed. If A's income should be more or less than nine hundred dollars, he would pay more or less; and B must pay less or more accordingly.

"In the absence of the income tax principle, what can be more equitable and just than the practice of taxing both mortgagor and mortgagee? If the former were allowed to deduct from his inventory the amount he owed the latter, it would often happen that the mortgagee, not living in the same town or State, so much property would escape taxation altogether. This, in some communities, especially our western States, would be a great evil. That much hardship may often result from taxing credits as well as property is undoubtedly true; but that only affords additional evidence that the income tax principle is the only correct one. Next to this would be the levying of all taxes upon property exclusively; and if adopted at the very commencement of a social organization, as at the landing of the Plymouth in sixteen hundred and twenty, it would secure a just taxation, because all property would be created, held, and transferred under that well known condition."

MR. HOWARD. Mr. President: I wish to read a few lines from Judge Cooley on Taxation, page one hundred and forty-six:

"The intention to exempt must in any case be expressed in clear and unambiguous terms; taxation is the rule, exemption the exception. All exemptions are to be strictly construed. They embrace only that which is within their terms."

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: This morning when I took occasion to move to reconsider the vote by which this Convention refused to adopt the report of the Committee of the Whole as to section one, I stated the reasons very briefly why I was in favor of some provision in this Constitution prescribing that taxation should be equal and uniform. I thought then, and I still think, that that is the only true rule. I believed then, and I still believe, that we were traveling without light upon an unknown sea, without a guide, unless we adopt some such rule. I am therefore for the amendment of the gentleman from San Francisco, Mr. Miller. I took occasion to say further, that the decisions of the Supreme Court had been uniform upon that question; that we knew what those decisions were, and that any other rule would be dangerous to adopt. The gentleman from San Francisco, Mr. Barbour, undertook to impugn my motives and the motives of others, and said we must be the instruments of corporations or were guided by the Record-Union. I am sorry for that man who never sees anything but wickedness in others and purity in himself. I am sorry for that creature who can only look upon the dark side of everything, and sees only crime in others and only virtue and honor and glory in his own case. I want to know what we have in the distinguished reputation of the gentleman from San Francisco, tracing it back for thirty years, that shows that he occupies a more favorable position before the people of this State than other members of this Convention who have been known for that period here in public life. Every question ought to rest upon the same proposition of right, and because the distinguished gentleman from San Francisco may be purer and better and abler than some other member, it does not follow that what he offers is better or worse, or that this or the other principle ought to be defeated. I have heard enough of this impugning members' motives without any cause—saying that this gentleman and that gentleman is the tool of wealth, or of the corporations, without reason and without cause. Such things are unusual in any legislative body, and are unheard of among gentlemen in bodies of this character. For one, I denounce it as wrong and contrary to every principle of legislative courtesy and the amenities of social life. [Applause.]

Now, sir, one word to the question. In Cooley on Taxation, page one hundred and thirty, we find the following:

"To tax all loans of money would be equal, and would enable all to adjust their rates of interest accordingly; but to tax all except those made by A, B, and C, or all but those of the inhabitants of a single city, would be unequal, and would create an invidious and unjust distinction in favor of the excepted persons, which would give them the advantage of higher net rates. The one would be taxation; the other would be lawless exaction."

That was my point. I claim that under the proposition of uniformity and equality you can tax mortgages and you can tax credits, if you tax all mortgages and all credits alike, and every man's mortgages and every man's credits alike; and without those words you have no safe rule by which you can be guided. While I cannot say that the amendment presented by the gentleman from San Francisco is the best that could be presented for our consideration, yet I confess that I favor it, because it has that declaration of uniformity and equality in it. If that is in the interest of corporate wealth I do not know it. Why, gentlemen, wealth will take care of itself. It is the man of small means, who works every day for his money, and who does not have his whole time to think upon these questions, that needs protection. This is not in the interest of wealth. It places everybody equal before the law, and then the rich and the poor will have an equal strife. The great trouble with any taxation of wealth or money is that it hides itself. It never hides when we say taxation shall be equal and uniform. It is inequality and a want of uniformity that will allow it to hide.

MR. SMITH, of San Francisco. If these words are necessary why were they not put in the Constitution of the United States?

MR. ESTEE. I never knew that the Constitution of the United States prescribed any rule of taxation for States. It is true, that they have a right to prescribe a rule of taxation. They recently adopted an income tax, and a very important tax, too. It was unpopular for two reasons: First, it induced persons to lie about their income, because they did not wish their business exposed.

MR. TINNIN. Was it not unpopular because it reached the rich?

MR. ESTEE. Very possibly it might have been unpopular for that reason in part. But it was not on the ground of uniformity. No income tax can be uniform, and you cannot find an argument all through the books of the most experienced and the ablest financiers to show that taxation should not be uniform and equal. It is the very fundamental principle of governments that are organized under written Constitutions. Any other rule necessarily leads to ruin, and it is to avoid that that we should place it in this Constitution. It is true, only sixteen Constitutions of the United States have put in equal and uniform, but the others have such a system of taxation as prescribes what property shall be taxed, and how it shall be taxed so as to result in uniformity and equality. I have taken up more of the time of the Convention than I intended. But I look upon this question as the gravest that can come before us, and I hope it will be treated with the calmness and care that such a question ought to be treated.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I beg to answer the question put by the gentleman from San Francisco, as to why these words are not in the Constitution of the United States. They are, in effect. When taxation is directed by the United States Government upon the States, it is apportioned in proportion to the number of their Representatives in the lower House, and that is the equality which that instrument secures. In the time of the late rebellion there was two hundred and eighty thousand dollars assessed upon this State, and it was collected by the State in the ordinary way and paid over to the United States Government. The States took care of the method of collecting this taxation, and the General Government assessed how much each State was to pay, and this was settled by the number of their Representatives. The delegate from Los Angeles appeals to this decision in Vermont. It is of the character of most of the decisions in these States in those days. Debts are held to be property. The same question has come up over and over again in all the States of the Union, and it has almost always been held, down to this decision of this State, that these debts were property. In this case of the Hibernia Bank, this Supreme Court overruled all these decisions. They overruled the whole line of decisions in this State. Now this case is greatly misunderstood and perverted in the minds of many gentlemen here. The trouble did not arise on the ground of the word "equal" in the Constitution, but it was upon the ground that solvent debts and mortgages were not property within the terms of the Constitution. "All property shall be taxed in proportion to its value," is the language of the old Constitution. The question was whether solvent debts and mortgages are property within the meaning of that clause of the Constitution. That is the point upon which the case was decided. Chief Justice Wallace says:

"The question in hand is whether 'credits' are 'property' in the sense in which the latter word is employed in the thirteenth section of the eleventh article of the Constitution, which requires all 'property' to be taxed in proportion to its value."

Judge McKinstry states the question in the same form, and reasons it out in the same form. Again he says:

"It is property in possession on enjoyment, and not merely in right, which must ultimately pay every tax.

"The Legislature may declare that a cause of action shall be taxed,

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but a cause of action cannot pay the tax; and this because it has, and can have, no value independent of the tangible wealth out of which it may be satisfied.

"In a certain sense a promissory note or any credit is property. Whether 'solvent,' as the term is ordinarily employed, or not, it may be assigned for value; it would be difficult, however, to explain why a note discounted at twenty per cent. would be less appropriately called 'property' than one sold at par. In any case, a credit has no value other than it has required by reason of the probability that the property, having present actual value, upon which a tax is levied and collected, will be applied to the satisfaction of the claim it represents. He who has the property in possession must be taxed on its value, and the value once taxed cannot be retaxed without a violation of the constitutional provision that each value shall be taxed proportionately to the sum of all of the values." Again:

"Such is the uncertainty of human language that it is absolutely necessary to consider the context in order to determine the sense in which a particular word is employed if it can ever be employed in more than one."

Now, this Constitution that we are trying to make, after declaring that taxation shall be equal and uniform, goes on and declares in the context that these things shall be deemed property—that they are property within the meaning of this Constitution for the purposes of taxation. It was the omission of this provision that left the Court at liberty to hold that they were not property within the terms of the Constitution. Here you declare they shall be. They say: We are to be controlled by the context. They say we are to be controlled by the language of the instrument. But the Constitution failed to contain the language that these two things shall be taxed as property. If that were in there this decision never could have been made in the world, and it was the absence of this provision that led to that decision. Now, we propose to put it in our present Constitution. Personal considerations have nothing at all to do with it. If I am in favor of taxing mortgages and solvent debts, I do not know whether it is of any consequence. I drew the very section that you approve of here in this report taxing mortgages, and I suppose I may reasonably claim to be in favor of it. I have expressed doubts as to the possibility of carrying it out. I see some difficulties in the way of it. Perhaps the proposition of the gentleman from San Diego taxing incomes would be a very good way of reaching mortgages and solvent debts, but the trouble is that it is not practicable. You cannot get them in. How do you know how much the State has? How do you know what the aggregate of incomes is? How much is going to be assessed to incomes? Does anybody know? When the tax levy for two years is to be made you do not know anything about how much is needed. You have got to adopt something that is practical. We shall never come to a conclusion if we keep on in this way. Here is the proposition of the gentleman from San Francisco, that taxes shall be equal and uniform. There has been no difficulty about this, except where there has been an attempt to violate that principle. When that is done, declare that solvent debts are property, and attach to it this plan of the committee, and I do not see why you cannot get through with this business very briefly and satisfactorily.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I always listen with a great deal of pleasure to the gentleman from Marin, and would just as soon hear him speak as to take down the "Merry Wives of Windsor" and read them, but I do not agree with him. I want to consider this proposition. All of the difficulty, as has been clearly shown in respect to the taxation of mortgages and solvent credits in this State, has arisen under the decision in this case of the Hibernia Bank. As long as that decision remains, we want that provision out of the Constitution of this State. What the people expect of us is to tax a man for what he is worth. I have no doubt that a good many men on this floor have told their constituents that they wanted to tax men for what they were worth. These secured credits are apportioned equally, so far as taxation is concerned, in section five. Now, instead of adopting the amendment of the gentleman from San Francisco, if something like this is adopted I say that it will entirely accord with what the Committee has done:

"All property shall be taxed according to its true value in money. Property shall include credits, franchises, investments of money in bonds; also everything known as property under the laws of this State. Debts due bona fide residents of this State shall be deductible from credits not secured by real or personal property. Growing crops, property exempt from taxation by the laws of the United States, property belonging to the United States, this State, or any political subdivision of this State, shall be exempt from taxation, and no other property shall be exempt."

Now, this says that all property shall be taxed, and it defines the property. It defines the exemptions and that no other property shall be exempt. Now, by adopting something like this we would get out of this trouble, and this section would be entirely in harmony with section five. I maintain that the proper method of taxation is what has already been substantially adopted by the committee. I desire, at the proper time, to submit this amendment, and I hope that this amendment of the gentleman from San Francisco will be voted down.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President, and Gentlemen of the Convention: I am greatly in hopes that this amendment, proposed by the gentleman from San Francisco, will be voted down. The proposition of equality and uniformity was presented to the Supreme Court of this State about as early as the fifth or sixth California Report, in which they decided that uniform meant affecting persons and property alike. Subsequently, when they come to apply it to the question of taxation and to the question of what constituted property in this State, it had no application at all to certain classes of property which might be sold under execution, or might be given in payment of a just debt. The consequence is that the terms equality and uniformity have no signification at all, or whatever signification it may suit the whims or caprice of any Supreme Judge, or any other judge, to give them. If we are to take the terms, equality and uniformity, as a basis of taxation, we shall have precisely the condition of things that we had prior to the decision made by the Supreme Court that I have referred to. With reference to the terms that are now proposed to be substituted, it gives us one single solitary rule by which the measure of the taxes upon property at least shall be determined, and that is its true value in money. No one can misunderstand or misapprehend the scope or extent or signification of the term. It means the true value of money in property. Adopt this as the standard, as the rule and guide for the valuation upon which taxation shall be levied, and there can be no room for construction; there can be no room for the Supreme Court to say that such an individual has been unequally taxed, or that such and such a law affects persons and property unequally, or that it does not affect persons and property alike. It is to avoid this thing of construction that is attempted by the provisions that it is now proposed to engraft upon the Constitution. Our instrument, as we have it now framed, declares that all laws of a general nature shall be uniform in their operation, and we have further provided that all laws with reference to taxation shall be general laws. Now, what more can you ask? It requires that all property shall be taxed in proportion to its value, and so far as a general law applicable to the State is concerned, it makes it uniform throughout the State. If you can obtain a better system than that I apprehend that you will have to go somewhere else to find it. There can be no better system conceived, and you avoid the difficulty in the decision of the Supreme Court with reference to the scope and effect of these very identical terms which you are seeking to engraft upon this Constitution.

MR. WYATT. Mr. President: I believe that the merits of this case have been fully developed by discussion, and that the members are now ready to vote upon the pending questions. I move the previous question.

Messrs. Howard of Los Angeles, Stedman, Lewis, and Smith of Santa Clara also demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. Miller, the ayes and noes were demanded by Messrs. White, Barbour, Joyce, Miller, and Howard of Los Angeles.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Hunter,	Schell,
Biggs,	Inman,	Schomp,
Boggs,	Jones,	Shafter,
Boucher,	Kelley,	Shurtleff,
Casserly,	Larue,	Stevenson,
Charles,	Lewis,	Stuart,
Cowden,	Mansfield,	Swing,
Crouch,	Martin, of Alameda,	Terry,
Dunlap,	Martin, of Santa Cruz,	Thompson,
Estee,	McCallum,	Townsend,
Estey,	McConnell,	Tully,
Freeman,	McNutt,	Van Dyke,
Garvey,	Miller,	Van Voorhies,
Glascock,	Mills,	Walker, of Tuolumne,
Gregg,	Murphy,	Waters,
Hager,	Noel,	Wilson, of Tehama,
Hitchcock,	Ohleyer,	Winans,
Holmes,	Reddy,	Mr. President—56.
Howard, of Los Angeles,	Rolfe,	

NOES.

Andrews,	Harrison,	Neunaber,
Ayers,	Harvey,	O'Sullivan,
Barbour,	Heiskell,	Reynolds,
Barry,	Herrold,	Rhodes,
Beerstecher,	Herrington,	Ringgold,
Bell,	Hilborn,	Smith, of Santa Clara,
Blackmer,	Howard, of Mariposa,	Smith, of 4th District,
Brown,	Huestis,	Smith, of San Francisco,
Burt,	Johnson,	Soule,
Campbell,	Joyce,	Stedman,
Caples,	Kenny,	Steele,
Condon,	Keyes,	Sweasey,
Cross,	Laine,	Swenson,
Davis,	Lampson,	Tinnin,
Dowling,	Larkin,	Turner,
Doyle,	Lavigne,	Tuttle,
Dudley, of Solano,	Lindow,	Vacquerel,
Farrell,	McComas,	Webster,
Filcher,	McCoy,	Weller,
Freud,	McFarland,	West,
Gorman,	Moreland,	Wickes,
Grace,	Nason,	White,
Hale,	Nelson,	Wyatt—70.
Hall,		

THE PRESIDENT. The question recurs on concurring in the amendment reported by the Committee of the Whole. The Secretary will read the amendment.

THE SECRETARY read:

"SEC. 2. Laws shall be passed taxing all moneys, credits secured by mortgage or trust deed, or unsecured, investments in bonds, franchises,

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and all other property, real and personal, according to its true value in money, except as hereafter provided; but the Legislature may authorize, except in the case of credits secured by mortgage or trust deed, a deduction from credits of debts due to bona fide residents of this State. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

Upon concurring in the amendment of the committee, the ayes and noes were demanded by Messrs. Larkin, Gorman, Doyle, Tinnin, and Dudley of Solano.

The roll was called, and the Convention concurred by the following vote:

AYES.

Andrews,	Howard, of Los Angeles,	Reynolds,
Ayers,	Howard, of Mariposa,	Schell,
Barry,	Huestis,	Schomp,
Beerstecher,	Hunter,	Shurtleff,
Belcher,	Johnson,	Smith, of 4th District,
Bell,	Jones,	Smith, of San Francisco,
Biggs,	Kenny,	Soule,
Blackmer,	Lewis,	Stedman,
Boucher,	Lindow,	Stevenson,
Burt,	Mansfield,	Stuart,
Campbell,	McCallum,	Sweasey,
Charles,	McCoy,	Swenson,
Cowden,	McNutt,	Swing,
Cross,	Moreland,	Tuttle,
Davis,	Murphy,	Vacquerel,
Dunlap,	Nason,	Van Voorhies,
Estee,	Nelson,	Walker, of Tuolumne,
Estey,	Neunaber,	Waters,
Farrell,	Noel,	White,
Filcher,	Ohleyer,	Wilson, of Tehama,
Garvey,	O'Sullivan,	Winans,
Hilborn,	Reddy,	Mr. President—67.
Hitchcock,		

NOES.

Barbour,	Harvey,	Mills,
Boggs,	Heiskell,	Morse,
Brown,	Herold,	Rhodes,
Caples,	Herrington,	Ringgold,
Casserly,	Holmes,	Rolfe,
Condon,	Inman,	Shafter,
Crouch,	Joyce,	Smith, of Santa Clara,
Dowling,	Kelley,	Steele,
Doyle,	Keyes,	Terry,
Dudley, of Solano,	Laine,	Thompson,
Freeman,	Lampson,	Tinnin,
Freud,	Larkin,	Townsend,
Glascock,	Larue,	Tully,
Gorman,	Lavigne,	Turner,
Grace,	Martin, of Alameda,	Van Dyke,
Gregg,	Martin, of Santa Cruz,	Webster,
Hager,	McComas,	Weller,
Hale,	McConnell,	West,
Hall,	McFarland,	Wickes,
Harrison,	Miller,	Wyatt—60.

ASSESSMENT OF LAND.

THE PRESIDENT. The Secretary will read the amendment proposed by the Committee of the Whole to section four.

THE SECRETARY read:

"SEC. 4. Every tract of land containing within its boundaries more than one government section shall be assessed and valued, for the purposes of taxation, by sections or fractional sections, in such manner as the Legislature may by law provide."

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I desire to make a few remarks with regard to this section before this Convention votes upon it, and in doing so I have no hesitation in saying that the proposition in this section is entirely impracticable, and in my judgment cannot be enforced if adopted. I believe that the action of this Convention has frequently been subjected to severe criticism on all hands, and, however, true or just that criticism has been it is not for me to say, but I undertake to say that if this Convention adopt this provision I am afraid that we will be subjected to ridicule if not contempt. Now, sir, the proposition as I understand it is to tax all tracts of land which exceed within their exterior limits six hundred and forty acres of land by Government sections, or fractional sections. Now, sir, I undertake to say that it cannot be done, unless this State goes to the expense of extending the United States surveys over all the agricultural lands of the State, or rather over all the lands now being owned by private parties in this State. And I go further than that, and say, that even then it is impracticable and it cannot be done. It is well known, I suppose, that in this State the best and fairest portions of it is included within Mexican or Spanish grants. What proportion of the agricultural lands are included in these tracts I will not undertake to say, but I believe it is safe to say that at least one half of the agricultural land is included within either Mexican or Spanish grants; and if you will examine the map of grants in the Surveyor-General's office you will find that in the year eighteen hundred sixty-six there were nearly five hundred millions of acres confirmed; and you will there see that they are in every conceivable shape and form. Now, how are you going to assess these vast agricultural lands in this State pursuant to section four? That section four is inflexible, and demands that the land shall be assessed according to the legal subdivisions of the United States, a proposition which I think I have shown cannot be done. Now, sir, in illustration of my argument I will state further, that in nearly every instance—I think it is safe to assume—these ranches have been divided and subdivided, and they have been so divided and subdivided according to the purchaser's wish, or according to the convenience of the purchaser, or the owner of the ranchos. I have had considerable experience in these matters and I know that they are irregularly divided. They have not been sold according to the legal subdivisions, or according to the United States survey. Where they have it has been the exception and not the rule. Now, if that be so I would like to have some gentleman of this Convention inform us how we are going to comply with the amendment to section four. I say that it is entirely impracticable and impossible.

MR. WYATT. It does not say United States survey; it says merely by sections.

MR. SCHELL. Will the gentleman inform me of any other kind of survey?

MR. WYATT. It says as the Legislature may direct.

MR. SCHELL. It says that they shall be assessed by sections or fractional sections.

MR. WYATT. As the Legislature may direct.

MR. SCHELL. Will the Legislature direct any other than the survey of the United States? I apprehend not. It is too clear for argument that the sections and fractional sections referred to can be none other than the sections of the Government of the United States. In illustration of my argument upon this point, I could refer to four, five, or six Mexican or Spanish grants in the county in which I live. I will take two on the west side of the San Joaquin river. They run along the west bank of the San Joaquin in a northwesterly direction. The one includes eleven leagues and, I believe, the other four leagues, and the average width is about four or five miles. These ranchos have been divided and subdivided, and have been sold to different individuals in tracts of from a few hundred to several thousand acres each, and in every instance they have been divided by a line drawn as nearly as may be at right angles with the general course of the river, consequently these division lines run diagonally across every section. Now how can the Assessor expect to assess these subdivisions of land pursuant to this section? I therefore propose to offer this amendment:

"Amend section four, as amended by the Committee of the Whole, so that it will read as follows:

"SEC. 4. Every tract of land, containing within its boundaries more than one Government section, shall, for the purposes of taxation, be assessed and valued, as far as practical, by sections or fractional sections, in such a manner as the Legislature may provide; provided, that lands included within the limits of Spanish or Mexican grants may be assessed in such tracts and in such manner as may be prescribed by law."

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: The gentleman may have a good deal more knowledge than I have upon this subject, but I say that there is no difficulty in it at all, and that any Surveyor who can run a straight line, by running a single line of the rancho, can take a rule upon the map and project every section. Mr. Edgerton said that he had consulted the Surveyor-General, and the Surveyor-General said to him that there was not a particle of difficulty in ascertaining the section by a rule and pencil. Now, sir, I do not propose, myself, to vote for any dodge upon the subject. No landholder can complain that his land is not assessed at a fair value, and no landholder can complain that the necessary means are not taken to ascertain what the value is.

MR. SCHELL. Take a Mexican rancho which contains seven leagues of land which has never been surveyed by the Government of the United States, how can you assess it by sections? The gentleman is stating a case that does not exist. I do not believe that there is a half-dozen ranchos in this State that have not been surveyed by the Government.

MR. SCHELL. I have been informed that such is not the case.

MR. HOWARD. Then the Surveyor-General of the State is mistaken. The place to go is to the Surveyor-General of the United States, he has the information. Now, we have heard a great deal here about land monopoly. The only way to cure that evil is to assess land at its true value, and that will knock these monopolies, and it is a course of legislation which no landowner can or will complain of; that is, he cannot complain with any justice; he will not complain unless he intends to evade his proper responsibility for his just proportion of the expenses of the Government. I say, sir, that this is one of the wisest and most salutary provisions in this article, and I trust that the Convention will adhere to it, and that they will not allow themselves to swerve from it by any small objection that may occur to the mind of any one about a little expense.

MR. LAINE. Is not the original section better than the committee's amendment?

MR. HOWARD. No, I think not. I prefer the amendment of the Committee of the Whole, as reaching the evil with more energy. It is absolutely necessary to the interests of this State. For it cannot be denied that the accumulation of large tracts of land by a few individuals is a great evil in this State. It cannot be denied that the only effectual way of reaching the evil is through taxation, of which no landowner can complain. Therefore it is that I am in favor of adhering to the amendment of the Committee of the Whole.

THE PRESIDENT. The Secretary will read the amendment offered by the gentleman from Stanislaus, Mr. Schell.

THE SECRETARY read:

"Amend section four, as amended by the Committee of the Whole, so

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that it will read as follows: 'SEC. 4. Every tract of land containing within its boundaries more than one Government section, shall be assessed and valued, for the purposes of taxation, as far as practicable, by sections, or fractional sections, in such manner as the Legislature may provide; provided, that lands included within the boundaries of Spanish or Mexican grants may be assessed in such tracts and in such manner as may be prescribed by law.'"

MR. LARKIN. Mr. President: I would ask the gentleman to accept this amendment, which I send up to be read for information, and I desire to speak to it.

THE SECRETARY read:

"Every tract of land containing within its boundaries more than six hundred and forty acres shall be assessed and valued, for the purposes of taxation, in tracts not to exceed six hundred and forty acres, in such manner as the Legislature may by law provide."

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: That amendment tends to obviate the necessity of the word "section," which is used in the amendment adopted by the Committee of the Whole. It does away with the word "section," and refers to tracts of land. That is to avoid the necessity of resurveying the lands to correspond with Government sections. It allows the Assessor to assess the lands without being governed by the Government survey, so that land of the same class and of the same quality, can be assessed alike, no matter in what shape or form it lies. It avoids the expense of resurveying the land. It may be done according to the surveys, or any other form the Assessor may determine. I think it is a correct proposition, and I think it avoids the objection to the present system.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. President: I think the amendment proposed by the Committee of the Whole is a pernicious one, because it lays open every assessment of such lands to the charge of unconstitutionality. It is a difficulty that cannot be remedied by any law passed subsequent to such a clause. The lands from Lake County clear down to San Diego, are mostly covered by original grants. They have been segregated in small parcels by metes and bounds. If this section, as amended by the Committee of the Whole, is adopted, every assessment not made in accordance with it will be an unconstitutional one most certainly. These tracts of land lying in these counties do not follow the lines of sections. You may have one hundred and sixty acres of land in three quarter sections, and when you attempt to describe it you will have to describe it by metes and bounds. Now, sir, much of these lands are unsurveyed, and I think I am correctly informed upon that subject. The exterior boundaries are surveyed, it is true, but not the lands by sections. It will take three or four years before the lands could possibly be surveyed, and after you have got them surveyed it would be just as difficult to describe some of the tracts. I am told by the Surveyor of my County that it would cost one hundred and seventy-five thousand dollars to survey the grants, for the purpose of assessment, within that county. In this haste you are running on to destruction. I am in favor of going as far as any man in the taxation of property, but this is not the way to reach this proposition. I think we should leave this to the Legislature, and not put it in the Constitution at all.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: I am in favor of the amendment of the gentleman from El Dorado, Mr. Larkin. The term Government section has a technical meaning. It must be surveyed by authority of the Government. That is what it means and nothing else. That is the very fault of the original section, and of the amendment of the Committee of the Whole. It preserves that expression—Government sections. Applied to these Spanish grants it will be entirely impracticable. Now, as I understand it, the purpose is to arrive at a full valuation of the land. That I am in favor of decidedly. I think it is one of the evils that we have submitted to for a long period of years, that large tracts of land have, in a measure, escaped taxation by being assessed in bulk. The value has thereby been reduced below what it would be if the tracts were assessed in small subdivisions. I am heartily in favor of the purpose of the Convention and the Committee of the Whole to arrive at a just and full valuation of these large tracts of land, but I see the difficulty in the section as it stands, and I am decidedly in favor of the adoption of the amendment of the gentleman from El Dorado. It leaves it to the Legislature, saying that they shall be assessed in tracts of not to exceed six hundred and forty acres.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: It seems to me that the only way to be safe is to amend this section so as to apply this rule to the lands which have been surveyed now, and the Legislature or Counties hereafter would, as they saw fit, extend the surveys when they found it necessary. It seems to me, that at present, all you can say is, that where lands are surveyed, or where they may be unsurveyed, hereafter this rule shall apply, and they shall be assessed separately. Now, if you allow this section to stand as it is, in the first place, there will be a great deal of land escape taxation. That clause requires that it must be assessed by sections. The latter clause, saying in such a manner as the Legislature shall provide, does not affect it at all, because that only gives the Legislature the right to provide the manner in which the assessment, by sections, shall be made. How are you going to get at these large ranchos? They would not be surveyed, and you could not survey them except by sections, and by simply putting in the word "or" there it would amount to nothing at all; that would give the Legislature the right to assess them in any other way. The amendment of the gentleman from El Dorado goes farther, it says that all land shall be assessed in tracts not to exceed six hundred and forty acres. How are you going to survey six hundred and forty acres?

MR. LARKIN. There are private surveys.

MR. MCFARLAND. It has been stated that these lands have never been surveyed at all. If you are going to assess by subdivisions, let it be by Government sections. Between the two, you had better keep the word section there, but it seems to me that it would be better to apply the rule simply to those lands that have been surveyed or that shall be surveyed; that makes it mandatory upon the Legislature and would give them the power to extend the surveys.

MR. HOWARD. I shall vote for the amendment of the gentleman from El Dorado. I think it covers the whole difficulty and meets it fully.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: A great many locations are made on unsurveyed lands. I do not see how, under this section, these lands could be assessed at all. According to my view the section as it stands is imperfect. It will not allow taxation to be placed upon all of the lands of this State. If these Spanish grants or ranchos are unsurveyed and not sectionized, of course they cannot be taxed. The amendment of the gentleman from Stanislaus, somewhat modified, would effect the purpose. If, after the word "section," we let it read, "as established by Government survey; if not so surveyed then in such manner as the Legislature may by law provide," would cover the point.

MR. HOWARD. If you amend merely by putting in the word "or," don't you subject the taxation on land to any other rule the Legislature may adopt?

MR. HAGER. I do not use the word "or." I say that it shall be assessed by Government sections, if surveyed; if not, then in such manner as the Legislature may provide. That is to cover the cases omitted in the section as it now stands.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: The only difficulty now is, that the Assessors have to equalize on too large a scale. Some land is good and some is bad, and they go upon their judgment and take the aggregate value of the whole. Perhaps if their attention was directed to a small tract of land they would do better. Now, to sectionize these lands by the State, I do not believe can be done for a million of dollars. I do not believe that in the counties where my lands are it can be done for one hundred thousand dollars. There are no sections there. The township lines are all there is to go by, and I do not believe it can be done for one hundred thousand dollars. It would beggar the State to undertake to do it. The proposition of the gentleman from El Dorado seems to be very feasible. It is subject to some difficulties, but the Assessors could ascertain the amounts just as correctly, at any rate, as they do now. I prefer that proposition as best subserving the purpose. The one proposed by the Committee of the Whole is utterly impracticable. It is absolutely ruinous for the State to undertake it.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

NOTICE OF RECONSIDERATION.

MR. MORELAND. Mr. President: I wish to send up a notice.

THE SECRETARY read:

"I hereby give notice that, on to-morrow, I will move to reconsider the vote by which section two of the report of the Committee of the Whole on the article on revenue and taxation was adopted."

ASSESSING LAND IN SMALL TRACTS.

THE PRESIDENT. The question is on the amendment of the gentleman from Stanislaus, Judge Schell, which the Secretary will read.

THE SECRETARY read:

"Every tract of land containing within its boundaries more than one Government section shall be assessed and valued, for the purposes of taxation, as far as practicable, by sections, or fractional sections, in such manner as the Legislature may provide; provided, that lands included within the boundaries of Spanish or Mexican grants may be assessed in such tracts and in such manner as may be prescribed by law."

MR. AYERS. Mr. President: I hope that the amendment will not be adopted in its present form. The term "section" is a technical term, and will apply to the sectionized sections as made under Government surveys. I think the other amendment is much better, where the term "six hundred and forty acres" is used.

The amendment was lost—ayes, 31.

MR. GORMAN. Mr. President: I offer a substitute.

THE SECRETARY read:

"SEC. 4. Every tract of land containing within its boundaries more than one Government section, and through which section lines have been or may be run, shall be assessed and valued, for the purpose of taxation, by sections or fractional sections; and all lands where the boundaries only are surveyed, shall be assessed and valued, for the purpose of taxation, in tracts of six hundred and forty acres, or as nearly equal to that amount as may be possible, and in such manner as the Legislature shall provide."

MR. LARKIN. Mr. President: I have the same objections that I had to the other, that the words Government survey are used. There would be the question to determine in the Courts, whether there was a Government survey. I deem it objectionable upon that ground. The reason I offered a substitute was to avoid that.

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MR. GORMAN. There is not a word said about Government surveys. It only says land that has been surveyed.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I hope this Convention will either adopt the amendment as reported by the Committee of the Whole, or adhere to the original section reported to this Convention by the Committee on Revenue and Taxation. What is the use of a survey if it is not a final survey? What is the use of having a description of land placed upon the record for purposes of taxation that has no real official sanction? It is by reason of the unofficial character of surveys that your large assessments are defeated. This, and this alone, is what has cost so much in the loss of taxes. It has been in consequence of these defective descriptions of land. Suppose it does cost three million dollars to survey the lands in this State—for a final survey. You would actually save money by the experiment, because you lose a large amount annually in assessments. Our county expended, during the last two years, nearly thirty thousand dollars for the purpose of designating, by official surveys, the lands of that county. They have never lost any money by the expenditure. If you survey by six hundred and forty acre tracts, it is true you may give your official sanction to it, but when you come to have it surveyed by Government sections, what will be the result? It will amount to confusion worse confounded. It is useless to adopt any but the one single plan, and that is to follow the Government surveys. Gentlemen say they want to except out these large grants. Where is the Spanish grant that has been approved that has not been surveyed and the township lines run? There are none. All that is necessary is to project the section lines. The land is numbered in lots and parcels.

MR. AYERS. Do you mean to say that all the exterior lines have been run?

MR. HERRINGTON. Yes, sir.

MR. AYERS. And sectionized?

MR. HERRINGTON. I did not say so.

MR. LARKIN. What proportion of the land in California has been surveyed by sections?

MR. HERRINGTON. Perhaps half of it.

MR. LARKIN. How are you going to compel the Government to survey the balance?

MR. HERRINGTON. I don't care whether the United States Government surveys it or not. They would not be Government sections necessarily. Suppose it is a United States survey that is wanted. When these section lines are projected upon Government lines, there is no material difference. But it is worse than folly to require them to survey these lands by any other than Government lines. It is worse than folly. Now it is true that the Surveyor may follow meridian lines, but it is equally true that in surveying, where there is nothing of this character required, where he is not required to follow Government lines, the lands will be cut up and subdivided, as they have been, and sold without reference to these lines at all. The lines may be designated by some natural object, such as a hill, or a creek. It may be designated either as hill land, as bottom land, or surveyed around as a wood land tract. There is no regularity about it. There would be nothing but confusion from the beginning to the end.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. President: The gentleman is laboring under a very great mistake if he thinks that everybody can make a Government survey. In a case, Middleton v. Low, in the thirtieth California, there is a case where this is very clearly decided. It was decided there that no Government lines existed except those run by the Government. Our Supreme Court decided that no such sections existed, notwithstanding they were run by the County Surveyor, under authority of the State. They never did exist until the Government lines were run by the Government. They undertook to mandamus the Governor and compelled him to issue a patent for one of these sections; the Court refused to order him to do it; the Court held that no such section existed. Therefore, I say, that the only man who has authority to run these lines is the man who derives his authority from the United States. Any lines run by authority of this State, does not make, and cannot make a Government section. It is as much impossible for them to make a Government section, as it is for God Almighty to make a yearling calf in ten minutes. As far as any of these amendments are concerned, I would rather see the whole section stricken out. I have had some experience myself in defeating these taxes, and I know that the great difficulty that exists in enforcing the payment of taxes, is the numerous and complicated requirements of legislative enactments and constitutional enactments, requiring that certain things must be done. The more laws you have the more requirements there are for Assessors to comply with, the more danger there is that they will not be complied with. In every instance where they fail to comply with the law, the tax cannot be enforced. Now, you may amend so as to require that these large tracts of land shall be assessed in tracts not exceeding six hundred and forty acres, and still you will find ignorant and stupid Assessors, who will assess them the other way. They will get six hundred and forty-one acre tracts; they will get seven hundred acre tracts in a great many instances. In a great many cases they will fail to comply with the law. In a great many instances it will be impossible for them to comply with the law. In a great many cases in these large tracts of land no lines are run, and no monuments fixed by which they can be segregated into tracts. And as it takes time to survey so much land these large landholders will avail themselves of all these technicalities, and the result will be, and I warn you of it now, that they will escape taxation. For these reasons I think it advisable to strike the whole provision out.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: Various propositions have been submitted to this Convention to discourage land monopoly. Among others are sections three and four of this article. Section four, as presented by the committee, as well as the substitute adopted by the Committee of the Whole, have the same object in view. In my judgment, each of them fails to accomplish the great good which ought to be accomplished, in providing that large tracts of land exceeding six hundred and forty acres, should be assessed at the same rates as smaller tracts. In section three, provision was made that cultivated and uncultivated land of the same quality, and similarly situated, shall be assessed at the same value. The same idea is sought to be carried out here: that large tracts of land shall be assessed at the same rate as small tracts; and to accomplish that purpose, these different propositions have been presented. The one presented by the Committee on Revenue and Taxation involves the expenditure expended for the survey of these large tracts of land. That is a proposition which is wholly impracticable. Then another proposition was presented in Committee of the Whole—not yet presented here, because they had no reason to sustain it—that these parties shall be required themselves to have these surveys made. Ultimately the Committee of the Whole adopted this section as it now stands here. The plain construction of the language is, that the State must have this land surveyed, or it cannot be taxed at all; because it says that every tract of land containing in its boundaries more than one section shall be assessed, for the purposes of taxation, by sections and fractional sections, in such manner as the Legislature may provide; therefore, it cannot be assessed except by sections. They are not to be assessed at all until the Legislature goes to this vast expense, which, in some counties, will amount to more than one hundred thousand dollars to sectionize these grants for the purposes of taxation. Now, sir, it has been asserted here over and over again, that these Spanish grants have been sectionized, with scarcely an exception. The truth is, as any one can ascertain by going into the United States Surveyor's office, that the majority of them have not been sectionized. There is where the whole evil comes in. The proposition of the gentleman from El Dorado is the only proposition which is practicable in this connection. It reads as follows:

"Every tract of land containing within its boundaries more than six hundred and forty acres, shall be assessed and valued, for the purposes of taxation, in tracts not to exceed six hundred and forty acres, in such manner as the Legislature may by law provide."

It is said by some gentleman that these surveys can be made on paper. If that is the way they are to be made, intelligent Assessors can assess them without the aid of a Surveyor. If it is to be done on paper, no man is fit to be an Assessor who is not intelligent enough to make the survey. I don't see any use of the last clause, however—"in such manner as the Legislature may by law provide." We have already said, as to the manner by which it shall be assessed, that it shall be assessed in tracts of six hundred and forty acres or less. It is hard to say what this last language would apply to. The Constitution itself has provided the manner, so far as it is necessary to specify the manner. If not, the Legislature is required to carry out the provisions of this Constitution, and I don't see any necessity for using these words, because so far as that goes the purpose is accomplished without it. If the gentleman were present I would move to strike out the last words of the proposed amendment. I think it will accomplish the only thing that can be done in this matter. I think it is very desirable to do so. It ought to be in the Constitution. We will then have gone as far, perhaps, to discourage land monopoly as we can legitimately go. We will have provided that cultivated and uncultivated land, of the same quality and similarly situated, shall be assessed at the same value. The same thing ought to be stated in section three, that large tracts of land of the same value should be assessed at the same rate per acre as these smaller tracts.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: As far as the subdivision of land is concerned, it don't make much difference whether taxes are made by quarter sections or half sections. Now, sir, as far as I know, very few Spanish grants in this State have been sectionized. Land that has been taken up—Government land taken up—as you are all aware, has been taken up by the dummy system, and these dummies have sold their titles off to the large landholders. As the land question is under consideration I think we should give it all the consideration it needs. There is not another question to-day of more importance to the people. If we look over the State we will see, according to the report of the Surveyor-General for the year eighteen hundred and seventy-three, that there are one hundred and twenty-two landholders which own twenty thousand acres and upwards. There are sixty-seven which average seventy-three thousand acres, or one hundred and fourteen miles square; one hundred and fifty-eight own ten thousand acres each; Lux and Miller own two hundred and sixty-eight thousand acres. The only equitable way is to tax them in proportion to the productive capacity of the land. If they are taxed in that manner it don't make any difference whether they are taxed by quarter sections or half sections, or by large Spanish grants. I would like to call your attention to an amendment I shall introduce if opportunity offers. In the early part of the session I introduced a proposition to make land limitation practicable, and to restore to the State the land that has been stolen from it. It is almost absolutely necessary to have a resurvey of the State. Of course, it would involve considerable expense. There are a great many portions of the State that would not pay for surveying; besides, there are thousands of acres in the valleys, of good agricultural land; but it will not pay for surveying, because there is no irrigation on it. We shall never make land limitation possible until there is introduced a general system of irrigation; but in order to obviate the question as well as possible, I have an amendment when it is in order.

"Every tract of land held by any person, corporation, or association of persons, shall be assessed and valued, for the purposes of taxation, in proportion to its productive capacity."

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Now, again, in order to make these gentlemen pay their taxes we have to have a graded tax. We should have a graded taxation on all tracts over six hundred and forty acres; that is just and proper.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: I rise to make an explanation of a matter here connected with this amendment. Before I left my county I was instructed that I should look after an amendment of this kind. We have a grant in our county which contains about nine thousand acres; there is a great deal of good land and there is also a great deal of very poor land. Now, a person going over the country would make up his mind that there is more bad land than good land, but go and investigate and you will find that a majority of it is very good land. Now, the same class of land in the range of mountains opposite is settled up by small farmers, who are assessed at an average of five dollars an acre, while this other is assessed at six bits and one dollar and a half per acre. Now, this is a very important matter. Now, there ought to be some way of providing for a subdivision of this land. Of course, I understand the difficulties in the way, where these grants have not been surveyed, but it seems to me that the amendment of Mr. Larkin would meet the matter; the others would destroy the possibility of collecting taxes.

THE PREVIOUS QUESTION.

MR. CROSS. I move the previous question.

Seconded by Messrs. White, West, Ayers, and Barry.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. Gorman.

Lost.

THE PRESIDENT. The question is on the adoption of the amendment of the Committee of the Whole.

Lost, and the Convention refused to concur.

TAXATION OF MORTGAGES.

THE PRESIDENT. The Secretary will read the amendment to the Committee of the Whole, to section five.

THE SECRETARY read:

"SEC. 5. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year."

MR. LARKIN. Mr. President: I move to strike out all after the word "thereby," in line three.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. President: I hope the amendment will not prevail. It only remands the question back into the same condition which it has been in, and what will be the result. If a man owns a farm and there is a mortgage on that farm, he will not only pay the tax upon the farm, but the tax on the mortgage also. I don't think the people of this State are ready for such a proposition as that in the organic law. The section provides that a mortgage for the purposes of assessment and taxation, shall be considered as a portion of the property assessed. It is property, and the tax is placed upon it, where it belongs. It represents capital. Now, it is no answer to this proposition to say that these men will increase the rate of interest if they have to pay the tax. Let them do so; so they pay their taxes.

MR. TINNIN. What security have we that these people will pay their taxes under section five. We will simply leave them where we found them.

MR. AYERS. The law will require it.

MR. TINNIN. Such laws are never effective.

MR. AYERS. There has been a thorough discussion of this plan throughout the State, and I believe this plan is acceptable. I do not think that this Convention now ought to go back upon its action in that respect. It is a step forward at least. It is reaching a class that has never been reached before. It is placing them upon the tax roll. It is compelling them to take an interest in government. As it is now they do not care what becomes of the Government, or what rate of taxes men have to pay. They form an aristocracy of non-taxpayers.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: The reason I make this motion to strike out is that the latter part of the section includes only details. The first provision of that section provides that mortgages, and deeds of trust, shall be considered an interest in property; that the party holding the mortgage shall be assessed for the amount of that mortgage, and pay taxes upon that amount, and the party in possession shall pay the balance whatever that shall be. Treat it as a lien upon the property to the amount of the mortgage or deed of trust. I think the gentleman makes a mistake when he says these parties will not be assessed. They will be assessed, and the party in possession will not be compelled to pay taxes upon property he does not own.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: If the gentleman from El Dorado wants to accomplish exactly what he says he does not want to accomplish, then let him strike out the latter part of this section, for that will do exactly what he says ought not to be done. One thing is certain, there is no double taxation in this. The man who holds the mortgage will pay taxes on that, and the man who holds the land will pay taxes on the remainder, so that the land pays taxes once and no more. There is no double taxation. There is no taxing the money and the land too. Now, the gentleman wants to strike out the rebate in favor of the mortgagor, leaving the mortgagee to pay on all the mortgage, and the mortgagor to pay on all the land. He wants to strike out the exemption, which will accomplish exactly the reverse of what he pretends to want to accomplish. As a matter of fact, when the lender is taxed on his money he will charge it up to the borrower, and he will have it to pay anyway, either directly or in the way of increased interest. Now, in the name of reason, what is the use of making the debtor pay taxes on the whole of the land and then on the mortgage too? Do you not skin the debtor? That is all there is of it, that is the whole purpose. Now, as to railroad corporations, their debts are all outside of the State, their bonds are held in Europe. You cannot tax them, for they are held abroad. As to their land, if they own land in this State they will have to pay taxes on it. Now, a part of the section which the gentleman moves to strike out contains a clause that either party may pay the taxes. That is right. The mortgagor may, in order to save his land from being sold for taxes, have to pay the tax on the mortgage; if so, he has a right to charge it up against the debt. Again, it may become necessary for the man who holds the mortgage to pay the tax on the land in order to save his security, and in such case he may add the amount to his debt. That is right and proper; and yet the gentleman moves to strike it all out. I hope the motion will not prevail, sir.

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I cannot see what the gentleman from El Dorado, Mr. Larkin, is driving at. If he claims to be a representative of the farming interest, he is certainly not fairly representing that interest now. If he be a fair representative of that interest, he will sustain the provision as it now stands, and not try to strike out all the safeguards in it. If men have money to loan, they are going to loan it with reference to the interest they receive. I can see no difference whether a man pays the taxes on his farm entire, or whether he pays part and the mortgagee part, to be charged back to him in the shape of interest; but if the latter part of this section is stricken out, the farmer will have to pay the whole of the tax on his farm, and the tax on the mortgage too. He will have no rebate. If he has a farm worth ten thousand dollars, and there is a mortgage on it for five thousand dollars, he must pay taxes on ten thousand dollars—the value of the farm—without any rebate, and then, either directly or indirectly, pay the tax on the five thousand dollar mortgage, making in all fifteen thousand dollars, when in fact he is only worth five thousand dollars. I prefer to take the section as it is, or else strike the whole article out, and leave it as it has been in the past.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: Section two provides that laws shall be passed taxing all moneys secured by mortgage, etc. It taxes all credits secured by mortgage. The mortgagee is, therefore, by the express provision of this section, required to pay taxes upon the credit. Now, when section five provides that the mortgage shall, for the purposes of assessment and taxation, constitute an interest in the property affected thereby, it is entirely nugatory. The mortgagee pays his tax upon the credit, and whether the mortgage is treated as an interest or not is entirely immaterial. The land must respond to the tax, and the entire land must pay the tax, and the entire tax upon the land falls upon the mortgagor. He pays taxes upon the whole land, whether the mortgage is an interest or not, and the mortgagee pays taxes upon the credit secured by the mortgage, and that constitutes double taxation, and nothing else. We argued this question to exhaustion in Committee of the Whole. We endeavored to point out the monstrous injustice of taxing the same property twice. We seemed to have reached the judgment and sentiment of this Convention, that such a principle was wholly wrong, and in conformity with that decision, we adopted the section as it now stands. We are now again called upon, through the thin disguise of amendment, to revoke that decision, and establish in its stead the monstrous principle of double taxation—a principle repudiated everywhere by the whole world, by every true and honest man. The gentleman who makes this motion to strike out, avows the intention of reaching the very object which this section as it stands accomplishes. Why does he want to strike it out, and leave cloudy what is now made clear? What is the object of this thing? Is he in favor of double taxation? for that is exactly what his motion calls for. Now, sir, the vote on this motion will decide whether this Convention is in favor of double taxation or not. That is the question now before this body.

THE PREVIOUS QUESTION.

MR. MURPHY. I think the majority of the Convention are in favor of concurring with the Committee of the Whole, and I move the previous question.

Seconded by Messrs. Huestis, O'Donnell, Dunlap, and Freeman.

THE PRESIDENT. The question is: Shall the main question be now put?

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Division was called for, and the Convention refused to order the main question, by a vote of 44 ayes to 58 noes.

MR. WHITE. Mr. President: I hope, sir, that the Larkin amendment will be rejected, because it will destroy the section. I think of all the sections adopted on the tax question this has been received with the most favor throughout the country. I know I get papers from my district, and the people say if the Convention does as well, or half as well, on other points we will adopt the Constitution.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: The gentleman has spoken for Santa Cruz, I will speak for Sonoma. I have been there and interviewed many citizens in respect to section five, and they are in favor of the section. I believe they will heartily concur in this principle. There is no need of argument. That section should commend itself to the hearts of the people of this State. It is the only equitable system that we have had. It divides the taxes between the owner of the land and the man who holds the mortgage, and that is the reason I favor it. Any proposition that will tax a man for what he is worth and there stop, it seems to me should meet with indorsement from every man who loves justice. The other system compels the owner of the land in effect to pay a double tax. It is unavoidable. He has got to pay the tax upon his land and then upon the mortgage. This section is clearly and carefully drawn, and I hope the Convention will stand by its work. If you adopt the motion of the gentleman from El Dorado, Mr. Larkin, you are voting fairly and squarely for double taxation, and that is not what the people of this State want.

SPEECH OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: I heartily concur with the sentiment expressed in regard to double taxation. The law never did, and does not now, make double taxation upon anybody. Double taxation is the act of a party who compels the borrower to pay the tax on the loan. It never was the law that did it. The whole argument proceeds upon the theory that the law makes double taxation. If I rent a house for one hundred dollars a year, with a provision that I shall pay the taxes, I am not compelled to do it by the law. I might say, if there was no tax on real estate, I would only have to pay one hundred dollars, and, therefore, real estate should not be taxed. But the owner can make me pay his terms in one case as well as the other, if my necessities are such that I must accept his terms. Now, sir, I confess I have been disposed to favor this new theory, which I believe I may say has no precedent in any State, of making a mortgage an interest in the land, and requiring that the party holding the land shall only pay so much as is left after deducting the mortgage.

MR. WHITE. You are mistaken.

MR. McCALLUM. The only question with me is as to how it will work. In regard to the clause in this section, in relation to the railroad corporations, that should certainly be stricken out. There ought to be no such exemptions. The theory upon which it is based is entirely wrong. The argument that all these railroad bonds are held outside of this State, is not true; and I think, sir, that the motion of the gentleman to strike out all after the word "thereby" should prevail, otherwise this is the grossest injustice.

MR. WHITE. Will the gentleman allow me to refer to the States of Kentucky, Minnesota, Nebraska, Michigan, Virginia, South Carolina, Massachusetts, Kansas, New York, and Illinois.

MR. HERRINGTON. If we strike out the words "except as to railroads and other quasi-corporations," that is all that is wanted.

MR. McCALLUM. I think the suggestion made by Mr. Herrington will accomplish the point which I make. But, as it stands, I shall vote for the amendment of Mr. Larkin. I am satisfied the section, in its present shape, will do a great deal more harm than good.

THE PREVIOUS QUESTION.

MR. KLEINE. There is about eighteen gentlemen here who keep the floor all the time, talking, talking, and don't give anybody else a chance. It seems to me they have talked about enough, and I move the previous question.

Seconded by Messrs. Stedman, McConnell, Huestis, Waters, and Gregg.

THE PRESIDENT. The question is: Shall the main question be now put?

Division was called for, and the Convention ordered the main question by a vote of 52 ayes to 39 noes.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from El Dorado, Mr. Larkin.

The ayes and noes were demanded by Messrs. Huestis, White, Heiskell, Waters, and Lindow.

The roll was called, and the amendment rejected by the following vote:

AYES.

Caples,	Kelley,	Smith, of Santa Clara,
Doyle,	Keyes,	Smith, of 4th District,
Dunlap,	Larkin,	Soule,
Hager,	McCallum,	Tinnin,
Heiskell,	McFarland,	Tully,
Hitchcock,	Ringgold,	Weller,
Holmes,	Rolfe,	Wyatt—23.
Hunter,	Schomp,	

NOES.

Andrews,	Biggs,	Casserly,
Ayers,	Blackmer,	Charles,
Barbour,	Boggs,	Condon,
Barry,	Boucher,	Cross,
Belcher,	Burt,	Crouch,
Bell,	Campbell,	Davis,
Dudley, of Solano,	Lampson,	Shafter,
Estey,	Larue,	Shurtleff,
Farrell,	Lavigne,	Smith, of San Francisco.
Filcher,	Lewis,	Stedman,
Freeman,	Lindow,	Steele,
Freud,	Mansfield,	Stevenson,
Garvey,	Martin, of Alameda,	Stuart,
Glascock,	Martin, of Santa Cruz,	Sweasey,
Gorman,	McComas,	Swenson,
Grace,	McConnell,	Swing,
Gregg,	McCoy,	Terry,
Hale,	McNutt,	Thompson,
Hall,	Miller,	Townsend,
Harrison,	Mills,	Turner,
Harvey,	Moreland,	Tuttle,
Herrington,	Morse,	Vacquerel,
Hilborn,	Murphy,	Van Voorhies,
Howard, of Los Angeles,	Nason,	Waters,
Howard, of Mariposa,	Neunaber,	Webster,
Huestis,	Noel,	Wellin,
Hughey,	O'Donnell,	West,
Inman,	O'Sullivan,	Wickes,
Johnson,	Reddy,	White,
Jones,	Reynolds,	Wilson, of Tehama,
Kenny,	Rhodes,	Winans,
Kleine,	Schell,	Mr. President—96.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole to section five.

The ayes and noes were demanded by Messrs. White, Hall, Moreland, Reynolds, and Kelley.

The roll was called, and the amendment concurred in by the following vote:

AYES.

Ayers,	Harvey,	O'Donnell,
Barbour,	Herrington,	O'Sullivan,
Barry,	Hilborn,	Reddy,
Belcher,	Howard, of Los Angeles,	Rhodes,
Bell,	Howard, of Mariposa,	Ringgold,
Biggs,	Huestis,	Schell,
Blackmer,	Hughey,	Shafter,
Boggs,	Inman,	Shurtleff,
Boucher,	Johnson,	Smith, of San Francisco,
Burt,	Jones,	Stedman,
Campbell,	Joyce,	Steele,
Charles,	Kenny,	Stevenson,
Condon,	Kleine,	Stuart,
Cross,	Lampson,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Larue,	Swing,
Doyle,	Lavigne,	Thompson,
Dudley, of Solano,	Lindow,	Townsend,
Estey,	Mansfield,	Tuttle,
Farrell,	McComas,	Vacquerel,
Filcher,	McConnell,	Waters,
Freeman,	McNutt,	Webster,
Freud,	Miller,	Wellin,
Garvey,	Mills,	West,
Gorman,	Morse,	Wickes,
Grace,	Murphy,	White,
Gregg,	Nason,	Winans,
Hale,	Neunaber,	Mr. President—85.
Harrison,	Noel,	

NOES.

Andrews,	Kelley,	Smith, of Santa Clara,
Caples,	Keyes,	Smith, of 4th District,
Casserly,	Lewis,	Soule,
Dunlap,	Martin, of Alameda,	Terry,
Glascock,	Martin, of Santa Cruz,	Tinnin,
Hager,	McCallum,	Tully,
Hall,	McFarland,	Turner,
Heiskell,	Moreland,	Van Voorhies,
Hitchcock,	Reynolds,	Weller,
Holmes,	Rolfe,	Wilson, of Tehama
Hunter,	Schomp,	Wyatt—33.

NOTICES.

MR. HITCHCOCK. I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention concurred in the substitute of Mr. Johnson, for section two of the article on revenue and taxation, reported to the Convention by the Committee of the Whole.

MR. LARUE. I give notice that I will, to-morrow, move to amend Rule Thirty-five, as follows: "That the main question shall only apply to the amendment to such section or substitute as may be under consideration."

TAXING CORPORATIONS.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section seven. The Secretary will read the section.

THE SECRETARY read:

"SEC. 7. No corporation, except for benevolent, religious, scientific, or educational purposes shall be hereafter formed under the laws of this State unless the persons named as corporators shall, at or before filing the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars or less of capital stock, and a further sum of twenty dollars for every additional ten thousand dollars

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of such stock; and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase."

MR. HOWARD, of Los Angeles. That was stricken out, because in the report of the Committee on Corporations there is a similar provision.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: This is the section that proposes to levy a tax for the privilege of mining in this State. So far as the mining interests are concerned they are not able to bear this burden. This is a most extraordinary proposition. Now, I do not propose, as far as my influence can go, that we shall make them pay a tax for the privilege of mining. I do not propose to make them pay one hundred dollars for the privilege of engaging in mining. They are taxed enough already. The Convention has stricken out the license tax for merchants, and why continue it against the mining interests of the State.

MR. TERRY. This simply extends to those corporations who incorporate without a cent of capital, but with millions on paper; for the purpose of swindling people.

MR. TINNIN. As far as the swindling corporations are concerned, they will simply go over to Nevada to incorporate.

MR. TERRY. Let them go there. The habit has been to sink a hole in the ground, and call it a mine, and then incorporate for five or ten million dollars, and then to put their stock upon the market for the purpose of swindling the people. If they are required to pay into the State treasury a per cent. of their pretended capital stock, they won't be so anxious to have such an immense amount. But if a mining company has fifty thousand dollars worth of property, it can very well afford to pay to the State the sum of one hundred dollars for the privilege of carrying on the business without personal responsibility. I hope the Convention will not concur.

REMARKS OF MR. MILLER.

MR. MILLER. Mr. President: If that were the object to be attained, and this section would accomplish the object, I should be in favor of it.

MR. TERRY. Wouldn't it?

MR. MILLER. The corporations of which so much complaint is made, are corporations organized for mining in Nevada, and they come here to San Francisco and incorporate for five or ten millions of dollars. The evil is in selling these worthless shares to the people of California. That is where the evil comes in. The incorporation does not harm any one; it is the flooding the country with these worthless shares. If this section is passed they will simply go over to Nevada to incorporate, and sell their shares in San Francisco just the same. Take the Yellow Jacket Mining Company; it is incorporated under the laws of Nevada, and the shares are sold here just the same as the shares of companies incorporated under our laws. This section cannot reach the evil, but it will prevent the formation of companies for the development of our own mines. That is why I object to it.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: Evidently one or two able gentlemen here do not understand the effect which the adoption of this provision would have upon the mining interests of this State, or else the intent is to destroy it. Now, sir, I know something about the mining business of this State. A careful examination has been made by the people of my county, and we have ascertained that of the ten principal mining companies of Nevada County, which now yield nearly two million dollars a year, only one of the ten would have been organized had a provision of this kind been in force at the time. Now, sir, gentlemen who know anything about this business, know this, that the mining operations of this State, so far as they have been carried on successfully for a number of years, have been carried on—mainly carried on—by corporations. The people of the immediate locality take some of the stock at low prices, and thereby furnish the means to erect machinery and do the prospecting which is necessary in order to ascertain whether it will be a valuable mine or not. The gentleman who is talking about an incorporated hole in the ground does not understand what he is talking. Only one mining company which operates in this State, has ever put its stock on the stock boards of this State, and that mine has yielded between two and three million dollars in bullion.

MR. TERRY. Does the gentleman know of any mine worth fifty thousand dollars that would not pay one hundred dollars?

MR. CROSS. In order to ascertain whether there is any mine at all or not, requires a large expenditure. In early days a man could take a pick and shovel and ascertain whether there was any gold or not. But now it requires the expenditure of large sums of money. I refer the gentleman to the Idaho mine, in Nevada County, which has paid one hundred and seventeen dividends of from five dollars to seven dollars and fifty cents each per share on the capital stock; and the prospecting of that mine required the expenditure of a large sum of money, and at the time if such a provision as this had been on the books, it would not have been undertaken. I could cite the gentleman to a number of cases. It comes right down to this, as I understand it: if you want to cripple legitimate mining enterprise in this State, adopt this section. Whatever reaches the mining interest reaches every other interest in the State.

MR. RINGGOLD. Mr. President: This Convention appears to have applied the principles of Artemus Ward. He was willing to sacrifice all his wife's relatives on the altar of his country. Each industry represented here is perfectly willing to sacrifice every other industry. That was the case with the corporations, and it is the case now with the miners. This proposition appears to me to be correct, and I will say to Mr. Tinnin, that as the miners on this floor were so willing to take the representation away from San Francisco, I shall vote to sustain this proposition.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: Whenever the interest of mining is mentioned I feel very warmly in favor of coming to their support, because I have followed the business of mining. But, sir, I believe this proposition is right. It is a license for carrying on business in a corporate form, in order that the State may receive enough to pay for taking care of their papers, which now she does not receive. I think this would have a good effect. A company that is going to do a bona fide business will not object to paying this small amount, and it will have the effect to bring down these companies to something like the actual corporate stock. These figures are much less than the State of Pennsylvania requires. For two hundred thousand dollars and less, they require a tax of two hundred dollars, and not exceeding four hundred thousand dollars, four hundred dollars tax.

MR. McCOY. Have they any gold mines in Pennsylvania?

MR. BARBOUR. They have some coal mines there. I don't know but a good coal mine is as good a thing as a gold mine. I say it is a fair tax. If these companies cannot pay into the State treasury the sum of one hundred dollars, let them be denied the privilege of incorporating.

SPEECH OF MR. KLEINE.

MR. KLEINE. Mr. President: I am utterly opposed to interfering with the mining interests of this country. Now, I am astonished at one gentleman on my left side, who said that a certain company sunk a hole in the ground, and then sold shares of stock. Perhaps I can instruct the gentleman a little. Now listen, gentlemen. I, myself, lived in a mining country for eleven years. I lived on the Comstock, and I remember the time when they sunk a little hole in the ground, and the stock was selling for four bits a share. They sunk a hole in the ground, just as the gentleman says. What was the consequence of these holes? What was the result? When they sunk that little hole down one thousand feet they struck ore which yielded the shareholders fifty millions of dollars. I have no doubt the gentleman on my left side would be very glad if he bought into that little hole. [Laughter and applause.] I have no doubt any one here would be glad to purchase in that little hole. [Laughter.] I know that silver mining cannot be carried on in Nevada, without corporations. The man who tells me that these mines can be carried on without corporations, that man don't know anything about it. These miners sometimes spend millions in sinking a shaft to find out whether there is any ore or not. These gentlemen would mighty quick buy stock in one of these little holes, if they knew it would pan out rich. [Laughter.] But they are mad when they buy stock and lose. When they purchase stock, they intend to get the best of these men if they can.

MR. TERRY. I never buy or sell.

MR. KLEINE. I have no doubt you would have been very glad to purchase one hundred shares in that little hole in Consolidated Virginia in sixty-nine and seventy. [Laughter and applause.] I remember when that stock sold at fifty cents a share. They made fun of it. I was one of them. I didn't know anything about it like the gentlemen here. Now, I hope this Convention will not interfere with the mining interest. I hope not. I shall oppose it. I am no gambler. I never gamble. I don't believe in it, but I believe in prospecting a country where we know there is gold and silver. You must remember the mines of Nevada are not like they are here, that you can dig down three or four feet. The mines of Virginia City run over ten thousand men, who support their wives and children in sinking these little holes. [Uproarious laughter.] There are thousands and thousands employed in San Francisco making machinery for these little holes. The man who tries to cripple the mining interest, tries to cripple the State of California.

MR. VACQUEREL. Mr. President: I am in favor of taxing all corporations, not the mining corporations only. None of these companies ought to object to paying one hundred dollars into the State treasury. It costs money to keep all the papers of these corporations, and I hope the section will remain.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I am in hopes this Convention will concur in the action of the Committee of the Whole in striking out this section. It is true that we have tolerated a great many abuses from the manner in which stocks have been floated upon the people of California; but it is not true that this section provides a remedy for these evils. Let the gentlemen present a remedy and we will sustain it. Let them give us some chance by which we can save the people. We look over these corporations, and we find nearly all this worthless stock brought from the State of Nevada, and Arizona, and Utah. You may pass this law, and they will still continue to flood the market with the stock, and this section will afford no security against it whatever. All they have to do is to incorporate in the State of Nevada, and open a branch office in San Francisco, and float their stock upon the market just the same. The people want some restriction that will hit where it is intended. We don't want to place ourselves in a position where we will be laughed at. These bogus companies don't care a straw whether you pass this section or not, for they can easily get around it. I can see no use in the section.

SPEECH OF MR. REDDY.

MR. REDDY. Mr. President: This matter was fully discussed when it was up before, and I do not intend to occupy much time again. It seems strange that an industry like the mining industry in this State, should be put upon the defensive, in a body possessed of the intelligence of this body. It seems very strange that there should be an attempt made here to cripple that industry. I should think the gentleman from San Joaquin, who represents a farming community, would be content to see the farmers made a privileged class, above all others, so that they can produce millions and millions of dollars' worth of wheat every year, ship it, receive the money for it, and not pay a dollar's tax on it. Now, is it a wise policy that seeks to discourage men from investing

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their money in enterprises that develop the resources of the State? Is it right, or fair, or just, or politic, to put a tax upon them which will prevent them from investing their money in these enterprises? Do these gentlemen ever take into consideration the immense amount of money invested in mining? Do they ever take into consideration the fact of the immense amount of money which goes into the hands of the laboring men of this State? It all goes back to the people. Do the gentlemen understand that this money that is collected in San Francisco goes right to the mountains, and is there paid out to the laboring men at a rate which no other industry in this State can or will afford to pay? Do these gentlemen understand that this industry employs thousands and thousands of men, from whom you never hear any complaint in regard to wages? I think an industry of that kind ought to be fostered and protected, rather than to be made the object of an attack of this kind. If the gentleman from San Joaquin understands corporations in California, he must know this, that it is necessary to have a large capital stock, for the shares are distributed around and used to develop the mine. The gentleman seems to think that people are deceived by reason of there being such a large amount of capital stock named in the articles of incorporation. Was any man, who is not a lunatic, ever deceived in any such manner? He buys a piece of paper marked one hundred dollars, for twenty-five cents; now, is any sane man ever deceived into the belief that the piece of paper is worth one hundred dollars because it is marked one hundred dollars? There is no harm in it, no fraud in it. The corporation names a certain sum as a limit in raising money to develop the mine, and no one is deceived by it. Now, a few men own a mine, and they want to form a corporation and convey title to the corporation. It will cost them, by this section, ten thousand dollars to change from a deed to stock certificates. No man is going to pay any such sum as that. They will go off over to Nevada and incorporate there, where they do not have to pay a cent. Now, I hope the good sense of this Convention will assert itself, and that the action of the Committee of the Whole will be concurred in.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. West, Howard, Campbell, and Vacquerel.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon concurring with the action of the Committee of the Whole in striking out the section.

The ayes and noes were demanded by Messrs. Joyce, Barbour, Hager, Dudley of Solano, and Smith of San Francisco.

The roll was called, and the recommendation of the committee concurred in by the following vote:

AYES.

Andrews,	Herrington,	O'Donnell,
Ayers,	Hilborn,	Ohleyer,
Barry,	Hitchcock,	O'Sullivan,
Belcher,	Holmes,	Reddy,
Biggs,	Howard, of Los Angeles,	Rhodes,
Blackmer,	Howard, of Mariposa,	Rolfe,
Boggs,	Huestis,	Schell,
Boucher,	Hughey,	Shafter,
Brown,	Hunter,	Shurtleff,
Burt,	Jones,	Soule,
Campbell,	Kelley,	Steele,
Casserly,	Kleine,	Stevenson,
Charles,	Lampson,	Stuart,
Cross,	Larkin,	Swenson,
Davis,	Larue,	Swing,
Dowling,	Mansfield,	Thompson,
Dunlap,	Martin, of Santa Cruz,	Tinnin,
Estey,	McCallum,	Townsend,
Filcher,	McCoy,	Turner,
Freeman,	McNutt,	Van Voorhies,
Garvey,	Miller,	Waters,
Glascock,	Mills,	Webster,
Gorman,	Morse,	Wellin,
Gregg,	Murphy,	West,
Hall,	Nason,	Wickes,
Harvey,	Nelson,	Wilson, of Tehama,
Heiskell,	Neunaber,	Winans,
Herold,	Noel,	Mr. President—84.

NOES.

Barbour,	Hager,	Schomp,
Beerstecher,	Harrison,	Smith, of San Francisco,
Bell,	Joyce,	Stedman,
Condon,	Keyes,	Sweasey,
Doyle,	Lavigne,	Terry,
Dudley, of Solano,	Lewis,	Tuttle,
Farrell,	Lindow,	Vacquerel,
Freud,	McConnell,	White,
Grace,	Ringgold,	Wyatt—27.

MR. WINANS. Mr. President: I move we do now adjourn.

NOTICE.

MR. LARUE. I hereby give notice that I will, on to-morrow, move to reconsider the vote whereby section five of the report of the Committee of the Whole on revenue and taxation was concurred in by the Convention.

THE PRESIDENT. The question is on the motion to adjourn.

Lost.

LICENSE TAXES.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section eight. The Secretary will read:

THE SECRETARY read:

"SEC. 8. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control. But the Legislature may by law impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I am opposed to the recommendation of the Committee of the Whole. There does not seem to be any good reason why every business that is run upon a legitimate scale, every business that is a necessity to the community, should be added to in the way of a license tax in order that parties may be enabled to carry on business in the community where they are required. Now, it is true that it has been customary heretofore in this State to levy a license tax upon all classes of business. It has never operated equally; it never can operate equally. There is no business whose regular receipts remain the same from month to month, or quarter to quarter, or from year to year, so that any reasonable calculation can be made of the profits to be derived. It is equally uncertain with reference to merchandising as it is with other callings. There is no more sense or reason in licensing mercantile business than there is in licensing the legal profession. It is a tax that is added to the commodities sold, and it is paid by the consumer in all cases. It is therefore an unequal burden that is directly assessed and taxed to the articles when they are sold, and the consumer, by his necessities, is compelled to pay it. I commend these considerations to your careful reflection, and I do earnestly and seriously believe that they will commend themselves to your judgment. There can be no escape from the conclusion that it is a compulsory tax levied upon the consumer. It is a question that should not need any argument. The poor bear these burdens and the rich escape. Thus the tax is heaped upon that portion of the community least able to stand it.

THE PRESIDENT. The question is on concurring with the action of the Committee of the Whole.

The ayes and noes were demanded by Messrs. Keyes, Joyce, O'Donnell, Moreland, and Doyle.

The roll was called, and the recommendation was concurred in by the following vote:

AYES.

Ayers,	Hager,	Neunaber,
Barbour,	Hall,	Reynolds,
Bell,	Harvey,	Rolfe,
Boggs,	Heiskell,	Schell,
Boucher,	Herold,	Shurtleff,
Brown,	Holmes,	Stevenson,
Burt,	Howard, of Los Angeles,	Stuart,
Campbell,	Hunter,	Swenson,
Caples,	Johnson,	Swing,
Casserly,	Jones,	Thompson,
Cross,	Lampson,	Townsend,
Davis,	Larkin,	Tully,
Dudley, of Solano,	Larue,	Vacquerel,
Dunlap,	Lavigne,	Van Voorhies,
Estey,	McCallum,	Waters,
Freeman,	McCoy,	West,
Freud,	Miller,	Winans,
Garvey,	Nason,	Mr. President—55.
Gregg,		

NOES.

Andrews,	Inman,	Ringgold,
Barry,	Joyce,	Shafter,
Beerstecher,	Kelley,	Smith, of 4th District,
Belcher,	Kenny,	Smith, of San Francisco,
Biggs,	Keyes,	Soule,
Blackmer,	Kleine,	Stedman,
Charles,	Lewis,	Steele,
Condon,	Lindow,	Sweasey,
Doyle,	Martin, of Santa Cruz,	Tinnin,
Farrell,	McComas,	Turner,
Filcher,	McConnell,	Tuttle,
Gorman,	McNutt,	Webster,
Grace,	Mills,	Weller,
Harrison,	Moreland,	Wellin,
Herrington,	Morse,	Wickes,
Hilborn,	O'Donnell,	White,
Hitchcock,	O'Sullivan,	Wyatt—53.
Huestis,	Rhodes,	

MR. HUESTIS. Yesterday I gave notice of a motion to amend the rules. I ask leave to make that motion to-morrow.

Leave was granted.

NOTICE.

MR. WINANS. I hereby give notice that, on to-morrow, I will move to reconsider the vote by which the amendment, as adopted by the Committee of the Whole, to section eight of the article on revenue and taxation was concurred in.

ADJOURNMENT.

MR. WINANS. I move that the Convention do now adjourn.

Carried.

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And at five o'clock P. M., the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND THIRTY-FOURTH DAY.

SACRAMENTO, Saturday, February 8th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Herrington,	Reddy,
Ayers,	Hilborn,	Reed,
Barbour,	Hitchcock,	Reynolds,
Barry,	Holmes,	Rhodes,
Beerstecher,	Howard, of Los Angeles,	Ringgold,
Bell,	Howard, of Mariposa,	Rolfe,
Biggs,	Huestis,	Schell,
Blackmer,	Hughey,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Inman,	Shurtleff,
Brown,	Johnson,	Smith, of Santa Clara,
Burt,	Jones,	Smith, of 4th District,
Campbell,	Kelley,	Smith, of San Francisco,
Caples,	Kenny,	Soule,
Chapman,	Keyes,	Stedman,
Charles,	Kleine,	Steele,
Condon,	Lampson,	Stevenson,
Cross,	Larkin,	Stuart,
Crouch,	Larue,	Sweasey,
Davis,	Lavigne,	Swenson,
Dowling,	Lewis,	Terry,
Doyle,	Lindow,	Thompson,
Dudley, of Solano,	Mansfield,	Tinnin,
Estey,	Martin, of Santa Cruz,	Townsend,
Evey,	McCallum,	Tully,
Farrell,	McComas,	Turner,
Filcher,	McConnell,	Tuttle,
Freeman,	McCoy,	Vacquerel,
Freud,	McNutt,	Van Voorhies,
Garvey,	Miller,	Waters,
Glascock,	Mills,	Webster,
Gorman,	Moreland,	Wellin,
Grace,	Morse,	West,
Hager,	Murphy,	Wickes,
Hale,	Nason,	White,
Hall,	Nelson,	Wilson, of Tehama,
Harrison,	Neunaber,	Winans,
Harvey,	Noel,	Wyatt,
Heiskell,	O'Donnell,	Mr. President.
Herold,	O'Sullivan,	

ABSENT.

Barnes,	Estee,	Overton,
Barton,	Fawcett,	Porter,
Belcher,	Finney,	Prouty,
Berry,	Graves,	Pulliam,
Casserly,	Gregg,	Shoemaker,
Cowden,	Joyce,	Swing,
Dean,	Laine,	Van Dyke,
Dudley, of San Joaquin,	Martin, of Alameda,	Walker, of Marin,
Dunlap,	McFarland,	Walker, of Tuolumne,
Eagon,	Moffat,	Weller,
Edgerton,	Ohleyer,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for two days was granted Messrs. Walker of Tuolumne, Laine, and Weller.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITIONS.

THE PRESIDENT and Mr. McNutt presented petitions, requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

RESOLUTIONS—TAXATION.

MR. KELLEY. Mr. President: I send up a resolution.

THE SECRETARY read:

WHEREAS, This Convention appears to be somewhat disorganized on the tax question, and in order to arrive at the true basis for the action of this Convention, I move the adoption of the following resolutions:

Resolved, That it is the sense of this Convention that we are in favor of taxing all property, including mortgages and evidences of debt.

Resolved, That we are opposed to making deductions or rebate in any form whatever.

MR. TINNIN. I second the resolutions.

MR. KELLEY. Mr. President: There seems to be a large minority, at least, in this Convention that is not satisfied with the action of yesterday. The consequence was that they have given notice of a reconsideration of the matter, and it will probably come up this morning. I introduce this resolution to ascertain the views of the Convention on these two questions: First, is it the sense of this Convention that mortgages and evidences of indebtedness should be taxed; and, second, are we in favor of rebates or reductions. It seems to me that if we could get a vote upon these two questions separately, that it will decide the thing without any further argument. It would be a very easy matter to fix up the details. I would therefore like to have the sense of this Convention upon these two propositions.

MR. ROLFE. Do you mean evidences of debt, or solvent debts?

MR. KELLEY. Solvent debts.

MR. HOWARD, of Los Angeles. One thing may be assumed to be the sense of this Convention, that the longer we debate it the less sense we shall get; therefore I move to lay the resolution on the table.

The ayes and noes were demanded by Messrs. Tinnin, Kelly, Hall, White, and Smith of Santa Clara.

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

AYES.

Ayers,	Herold,	Reynolds,
Barry,	Herrington,	Rhodes,
Boggs,	Howard, of Los Angeles,	Schell,
Boucher,	Inman,	Shafter,
Campbell,	Jones,	Shurtleff,
Charles,	Kleine,	Stevenson,
Cross,	Lavigne,	Stuart,
Crouch,	Mansfield,	Thompson,
Davis,	Martin, of Santa Cruz,	Waters,
Estey,	McCallum,	Webster,
Freeman,	McCoy,	Wellin,
Freud,	McNutt,	Wickes,
Garvey,	Miller,	White,
Gorman,	Mills,	Winans,
Hager,	Nason,	Mr. President—46.
Hale,		

NOES.

Andrews,	Holmes,	Schomp,
Barbour,	Howard, of Mariposa,	Smith, of Santa Clara,
Beerstecher,	Huestis,	Smith, of 4th District,
Bell,	Hughey,	Smith, of San Francisco,
Biggs,	Hunter,	Soule,
Blackmer,	Johnson,	Stedman,
Burt,	Kelley,	Steele,
Caples,	Kenny,	Sweasey,
Condon,	Lampson,	Swenson,
Doyle,	Larkin,	Terry,
Evey,	Larue,	Tinnin,
Farrell,	Lewis,	Townsend,
Filcher,	Lindow,	Tully,
Glascock,	McComas,	Turner,
Grace,	McConnell,	Tuttle,
Hall,	Moreland,	Vacquerel,
Harrison,	Nelson,	Van Voorhies,
Harvey,	O'Donnell,	West,
Heiskell,	O'Sullivan,	Wilson, of Tehama,
Hitchcock,	Rolfe,	Wyatt—60.

MR. JOHNSON. Mr. President: I am perfectly willing that the sense of the Convention should be taken, although it has already been taken. It is thought by a good many that it would relieve this question of a great deal of difficulty if they could ascertain the sense of the Convention directly as to the rebate. The Convention has already adopted section five by a very large majority. This is the second time that section five has been adopted. We have also adopted section two twice; and I think that the sense of the Convention has already been thoroughly decided that they are in favor of the rebate. Therefore, I call for a division of the question. I ask that the vote be taken on each proposition contained in the resolution separately.

MR. CAMPBELL. Mr. President: I hope that this resolution will not pass. We have spent day after day in discussing these questions, and I cannot see the use of getting any further general expression of opinion. It is certainly time to vote upon measures, and not upon abstract propositions. I hope, therefore, that this resolution will not prevail.

MR. BEERSTECHER. Mr. President: I hope that this resolution will prevail.

MR. WHITE. Which part of it?

MR. BEERSTECHER. I expect to see the resolution divided. It is, in fact, two resolutions; and the motive in offering these two resolutions which are opposed to each other, is for the purpose of getting an expression from this body, as to whether debts should be deducted or not. That seems to be the bone of contention between the gentlemen upon this floor in relation to taxation. It is not so much the propositions that have been offered here, because part of them have met the approval of gentlemen upon this floor; but the same gentlemen that would have approved the propositions voted against them, because they either did not allow the deduction of debts from credits, or because they did allow the deductions of debts from credits. Now, the only thing this Convention is divided upon is whether there should be a deduction or not. That is the point of divergence—deduction or no deduction—and we might just as well settle the matter by voting for the resolution allowing the deduction, or for a resolution allowing no deduction. Then we know the sense of the body upon that vital question.

MR. DUDLEY, of Solano. I would ask the gentleman whether this Convention has not twice voted aye on the proposition of rebates in adopting section five.

MR. BEERSTECHER. Well, sir, they probably have in section five, but I would say——

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MR. HOWARD, of Los Angeles. Suppose we have this abstract resolution, and then go on a practical measure, does this abstract vote bind us at all?

MR. BEERSTECHER. No, sir.

MR. HOWARD. What is the use of voting on it then?

MR. BEERSTECHER. It would not bind us any more than a man's promise, unless he desired to keep it. We have voted on section five, but there we have only voted in relation to mortgages. Now the proposition is not only as regards mortgages, but as regards solvent debts—unsecured credits. The gentleman from Los Angeles, Mr. Howard, says that it would not bind us; but it would certainly indicate how this Convention stands upon the question of deduction of debts from credits.

MR. HOWARD. How can that be when we have changed four or five times.

MR. BEERSTECHER. A number of gentlemen that have been unable to agree, are desirous of having this resolution carried, because it will determine their votes. They have said that it will determine their votes, and believing them to be gentlemen of veracity, I believe that it will determine their votes. I hope that one or the other of the resolutions will prevail.

MR. TINNIN. Mr. President: If there is any subject more than another that has been worn out in debate in this Convention, I think it is this question of taxation. We have debated the question, and all kinds of subjects surrounding it. We have discussed the firing upon Fort Sumpter, the problem of infallibility, the problem of transubstantiation, of religious worship, and talismanic influence. I think we have gone far enough, and I move the previous question.

MR. JOHNSON. I call for a division of the question.

THE PRESIDENT. It cannot be divided. The second resolution would have no meaning whatever, standing by itself.

MR. GRACE. Then it is impossible to get an expression of opinion.

Messrs. Grace, Condon, Huestis, and Freeman also demanded the previous question, which was ordered by the Convention.

Upon the adoption of the resolutions, the ayes and noes were demanded by Messrs. White, Kelley, Doyle, Condon, and O'Donnell.

The roll was called, and the Convention refused to adopt the resolutions by the following vote:

AYES.

Andrews,	Hitchcock,	Schomp,
Beerstecher,	Holmes,	Smith, of Santa Clara,
Blackmer,	Howard, of Mariposa,	Smith, of 4th District,
Caples,	Hunter,	Soule,
Dunlap,	Kelley,	Swenson,
Evey,	Larue,	Terry,
Filcher,	Lewis,	Tinnin,
Glascock,	McComas,	Tully,
Hall,	Moreland,	Turner,
Harvey,	Ringgold,	Wilson, of Tehama,
Heiskell,	Rolfe,	Wyatt—33.

NOES.

Ayers,	Hilborn,	Noel,
Barbour,	Howard, of Los Angeles,	O'Donnell,
Barry,	Huestis,	Reed,
Bell,	Hughey,	Reynolds,
Biggs,	Inman,	Rhodes,
Boggs,	Johnson,	Schell,
Boucher,	Jones,	Smith, of San Francisco,
Campbell,	Kenny,	Steele,
Charles,	Kleine,	Stuart,
Condon,	Lampson,	Sweasey,
Crouch,	Larkin,	Thompson,
Davis,	Lavigne,	Townsend,
Doyle,	Lindow,	Tuttle,
Dudley, of Solano,	Mansfield,	Vacquerel,
Estey,	McCallum,	Van Voorhies,
Farrell,	McConnell,	Waters,
Freeman,	McCoy,	Webster,
Garvey,	McNutt,	West,
Gorman,	Miller,	Wickes,
Grace,	Mills,	White,
Hager,	Morse,	Winans,
Harrison,	Nason,	Mr. President—68.
Herrington,	Neunaber,	

MR. MORELAND. Mr. President: In accordance with notice, I move to reconsider the vote whereby the amendment to section two, as adopted in Committee of the Whole, was concurred in by the Convention on yesterday.

THE PRESIDENT. The question is on the motion to reconsider.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. President: This section was concurred in yesterday by the Convention while we were operating under the previous question. It was done, not because a majority of this Convention, as I think, were in favor of this section, but because they thought it better than the original section proposed by the Committee on Revenue and Taxation. I voted for it, but at the same time I am not satisfied with it as it stands. It does leave the power with the Legislature to pass laws concerning taxation, and it seems to me to leave the power with the Legislature to exempt any property that they may see fit. It does not define property, either, according to what I think the definition ought to be. I have heretofore opposed the deduction of debts from credits, and quite a number of gentlemen have concurred with me in that position. We have made a consistent fight on it, but I see that it is the sense of this Convention that deductions shall be made. I shall, therefore, favor a section which will include that principle, and which I think is much better than section two as it now stands. Here is a section which has been gotten up by Mr. Johnson, and which defines what property is, and for the information of the Convention I will read it: "All property shall be taxed according to its true value in money." There is a declaration that all property shall be taxed according to its true value in money. Then follows a definition of what property is: "Property shall include credits, franchises, investments of money in bonds; also everything known as property under the laws of this State. Debts due bona fide residents of this State shall be deductible from credits not secured by real or personal property. Growing crops, property exempt from taxation by the laws of the United States, property belonging to the United States, this State, or any political subdivision of this State, shall be exempt from taxation, and no other property shall be exempt."

It seems to me that that section is not liable to any misconstruction. It seems to me that it is plain. It embodies the views that I have heretofore expressed upon this subject, except this matter of deduction, and as it is the sense of this Convention that deduction shall be made, I propose to support this section as the best one that has been offered, provided the motion to reconsider is carried.

MR. HOWARD, of Los Angeles. Mr. President: The amendment we have adopted embraces all property of every class and description. It requires it to be taxed, and therefore prevents any exemption. If we reconsider the next morning everything we have done the day before, we may make up our minds to sit here until next snow time. Therefore I move to lay this motion on the table.

The ayes and noes were demanded by Messrs. Hale, Blackmer, Beerstecher, Burt, and Wilson of Tehama.

The roll was called, and the Convention refused to lay on the table by the following vote:

AYES.

Andrews,	Howard, of Los Angeles,	Smith, of 4th District,
Ayers,	Hunter,	Soule,
Barry,	Jones,	Stevenson,
Bell,	Kleine,	Thompson,
Biggs,	McConnell,	Van Voorhies,
Cross,	McCoy,	Waters,
Davis,	Nelson,	Wellin,
Dowling,	Neunaber,	Wickes,
Garvey,	O'Donnell,	Winans,
Gorman,	Reed,	Mr. President—31.
Herrington,		

NOES.

Beerstecher,	Heiskell,	O'Sullivan,
Blackmer,	Herold,	Reynolds,
Boggs,	Hitchcock,	Rhodes,
Boucher,	Holmes,	Ringgold,
Burt,	Howard, of Mariposa,	Rolfe,
Caples,	Huestis,	Schell,
Charles,	Hughey,	Schomp,
Condon,	Johnson,	Shafter,
Crouch,	Kelley,	Shurtleff,
Doyle,	Kenny,	Smith, of San Francisco,
Dudley, of Solano,	Lampson,	Stedman,
Estey,	Larkin,	Steele,
Evey,	Larue,	Sweasey,
Farrell,	Lavigne,	Swenson,
Filcher,	Lewis,	Terry,
Freeman,	Lindow,	Tully,
Freud,	Mansfield,	Turner,
Glascock,	McCallum,	Tuttle,
Grace,	McComas,	Vacquerel,
Hager,	Mills,	Webster,
Hale,	Moreland,	West,
Hall,	Morse,	White,
Harrison,	Nason,	Wilson, of Tehama,
Harvey,	Noel,	Wyatt—72.

THE PRESIDENT. The question recurs on the motion to reconsider.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I hope this motion to reconsider will prevail, not for the purpose of adopting what is known as the Johnson amendment, either in its old form, or in its present. For one I shall vote to reconsider this, because I believe, not only, that we should tax solvent debts and retain the principle of rebate, but we should do it by one uniform rule. I am satified, sir, that the principle contained in what is known as the Boggs amendment is sound in principle, simple in its operation, and will be satisfactory to the people of this State. If I can get an opportunity to offer that for the consideration of the Convention, I shall certainly do so. Whether I will be able to do so or not depends upon circumstances. Now, I hope this motion to reconsider will prevail, and if it should prevail it will practically dispose of the question in both sections two and five.

MR. HERRINGTON. Mr. President: I am doubtful if any better proposition can be adopted than the one already adopted. There is only one other better that can be adopted with any degree of propriety, and that is the theory of taxing incomes. The very moment that you recede from the proposition of rebate, which is involved in the section already adopted, there is but one other course left that will bring equality and that is to tax the income on loaned money, and to tax it so that it will be at least equal to the tax on the money itself. I am for retaining the section as it now stands, although the other is the next best proposition that the Convention can fall upon.

MR. SCHELL. Mr. President: I move that the motion to reconsider be made a special order for Tuesday next, at ten o'clock. I make this

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motion in good faith, and for this reason: I look around here and see the number of absent members. Now, supposing that we reconsider this motion and proceed to discuss the proposition over again, the probability is that when the matter comes up finally the Convention will change the whole thing. That is the only object I have in making the motion.

MR. LAMPSON. Would it not be better to put it two o'clock.

MR. SCHELL. I have no objection to that. But I think it had better remain at Tuesday at ten o'clock.

MR. HAGER. Mr. President: A great deal of time has been spent over this question of taxation. I have taken very little part in it because I was not here during the discussion of it in Committee of the Whole. Now, I think this Convention has settled down to the two questions that may be formulated in a proposition that will meet the approval of all. As for myself I am in favor of taxing all kinds of property, real estate, personal estate, money in possession, money loaned, and everything capable of being reduced to money. Everything that may be designated property I am in favor of taxing, and requiring that it should bear its equal portion of taxation. These are the views I entertain, and that we can get at them in that way. All property——

THE PRESIDENT. The merits of the question are not open for debate.

MR. HAGER. I will suggest that instead of making this a special order it would be better to appoint a special committee to formulate these two propositions, and bring it before the Convention at some other day. I believe that the Chair, understanding as he does, the different views, could appoint a committee of about seven to formulate the proposition, and bring it before the Convention. In all probability that would harmonize the whole thing.

MR. JOHNSON. Mr. President: I hope that this proposition will be voted down, and that the motion to reconsider will prevail. I am opposed to the motion to make it a special order. It is taking unnecessary time. We have this matter before us now, and we might as well adjust it. We are in better condition to adjust it now than we will be hereafter.

MR. SHAFTER. Mr. President: I trust that the suggestion of Judge Hager will be adopted. I do not see any such evidences of harmony upon this section as my friend from Sonoma does. I am in favor of taxing mortgages, but I am not in favor of taxing them without the rebate. There have been fifty propositions which, as I think, do not differ one from the other at all. The formulation of them has been the trouble. In some respects there has been a fundamental difference in the substance of these propositions. Now, I believe that three or four men can formulate a proposition which a majority of the Convention will adopt.

MR. DUDLEY, of Solano. I hope the suggestion of Judge Hager will be adopted. It seems to me to be the only path out of the present difficulty.

MR. CROSS. Mr. President: I seconded the motion to have this made the special order for the reason that it is a question which demands, and it has had, a full house. That full house has determined, by a considerable majority, to formulate this proposition in a certain way. Now, when this house is very much reduced, it is proposed by these gentlemen, who have from day to day urged their views and failed to have them adopted, to take this matter up. Now, sir, as this has been considered a most important proposition, I hope that it will come up for consideration at a time when we can reasonably expect to have a good and liberal attendance. As to the proposition to have a committee of seven to formulate the report, I say that the Committee of the Whole has formulated a report and the Convention has acted upon it, and adopted it with very little change. The result of the committee will be confusion worse confounded. The action of the Committee of the Whole has been commented on by the press and is satisfactory to the people so far as I have been able to ascertain. Let us not tinker it.

MR. WINANS. Mr. President: I entirely agree with the views expressed by the honorable member from Nevada. To refer to a committee would imply that we are of one mind, when we are very well aware that we are not. It is entirely appropriate that we should postpone the consideration of this motion until there is a full house. Those who are absent are not absent from choice. They are entitled to have a hearing on this question. They looked upon the thing as settled, and are now away, and in justice to them and in justice to the propriety of having this subject considered, if it is considered again, before a full house, I am entirely in favor of the motion to postpone.

MR. MORELAND. Mr. President: I entirely disagree with the gentleman. This notice was given yesterday, when there was a full house, and if these members are absent it is their own fault. We cannot afford to postpone matters here simply for the convenience of members who choose to absent themselves. I hope that this motion to postpone till next Tuesday will not prevail, and that we will proceed to act upon this matter now.

MR. LARKIN. Mr. President: I am opposed to postponing this question. I am in favor of at once proceeding to vote upon propositions that are now in the hands of gentlemen upon this floor. This house clearly voted this morning that they were in favor of the general scheme adopted in Committee of the Whole; but the exact form we are not in favor of. We ought to dispose of this article so that we can proceed to other matters. This matter has been sufficiently discussed. All that I desire to see done is that the different propositions shall be read from the desk, and each one have an opportunity to vote upon them. The Convention is agreed upon one proposition or the other.

MR. WEST. Mr. President: I hope we shall proceed immediately to the consideration of the questions before us. The gentlemen who are absent are entitled to no regard so far as the duties of the Convention are concerned. Those members who are present have a duty to perform, and I hope we shall go on and do it.

MR. AYERS. Mr. President: I hope we will proceed at once with this report, and carry it through. Remanding the question over to next Tuesday will carry the whole report with it.

THE PRESIDENT. This is a mere postponement of the motion to reconsider.

MR. AYERS. Well, I think we are as ready to vote now as at any time. Those who are not here were advised by notice that a motion to reconsider would be made to-day. I am satisfied with the sections as they stand. There is nothing wrong in them that I can see, and I think they meet the judgment of a majority of the Convention.

MR. McCALLUM. Mr. President: I desire to offer an amendment to the motion. I move to amend by substituting as follows: "Resolved, That section two be referred to a special Committee of seven, to be appointed by the President, with instructions to report next Monday, and that their report be made a special order for Tuesday next at nine o'clock and thirty minutes A. M."

THE PRESIDENT. The motion is not in order. The question is on the motion to make this motion to reconsider the special order for Tuesday next.

The motion was lost on a division, by a vote of 40 ayes to 49 noes.

THE PRESIDENT. The question is on the motion to reconsider the vote by which the Convention concurred in the report of the Committee of the Whole.

Upon the motion to reconsider, the ayes and noes were demanded by Messrs. Biggs, Johnson, Barry, Cross, and Winans.

The roll was called, and the motion to reconsider prevailed by the following vote:

AYES.

Barbour,	Herold,	O'Sullivan,
Beerstecher,	Hitchcock,	Rhodes,
Bell,	Holmes,	Rolfe,
Blackmer,	Howard, of Mariposa,	Schomp,
Burt,	Huestis,	Shurtleff,
Caples,	Hughey,	Smith, of San Francisco,
Condon,	Johnson,	Stedman,
Dudley, of Solano,	Kelley,	Steele,
Evey,	Kenny,	Sweasey,
Farrell,	Keyes,	Terry,
Filcher,	Lampson,	Tinnin,
Freeman,	Larkin,	Tully,
Freud,	Larue,	Turner,
Glascock,	Lewis,	Tuttle,
Gorman,	Lindow,	Webster,
Grace,	Mansfield,	West,
Hager,	McCallum,	White,
Hall,	McComas,	Wilson, of Tehama,
Harvey,	Moreland,	Wyatt—59.
Heiskell,	Morse,	

NOES.

Andrews,	Howard, of Los Angeles,	Schell,
Ayers,	Hunter,	Shafter,
Barry,	Jones,	Smith, of 4th District,
Biggs,	Kleine,	Soule,
Boggs,	Lavigne,	Stevenson,
Boucher,	McConnell,	Stuart,
Brown,	McCoy,	Thompson,
Charles,	McNutt,	Townsend,
Cross,	Miller,	Vacquerel,
Crouch,	Mills,	Van Voorhies,
Davis,	Nason,	Waters,
Doyle,	Nelson,	Wellin,
Estey,	Neunaber,	Wickes,
Garvey,	Reed,	Winans,
Harrison,	Reynolds,	Mr. President—47.
Herrington,	Ringgold,	

MR. JOHNSON. Mr. President: I desire to offer an amendment.

THE SECRETARY read:

"All property shall be taxed according to its true value in money. Property shall include credits, franchises, investments of money in bonds; also, everything known as property under the laws of this State. Debts due bona fide residents of this State shall be deductible from credits not secured by real or personal property. Growing crops, property exempt from taxation by the laws of the United States, property belonging to the United States, this State, or any political subdivision of this State, shall be exempt from taxation, and no other property shall be exempt."

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. It does seem to me that the measure as it now stands——

MR. CROSS. Mr. President: I rise to a point of order. The motion to reconsider was a motion to reconsider a vote by which section two was adopted. At the time when section two was adopted, as appears on page two of the Journal of yesterday, we were acting under the previous question. My impression is that the Chair has ruled upon this point before, to the effect that no discussion is in order on the reconsideration of a section adopted under the previous question.

THE PRESIDENT. The previous question was exhausted on that vote.

MR. SMITH. Mr. President: So far I have refrained from exhausting any time in expressing my views upon this question. As every member will be called upon to cast his vote upon this question, I wish to arrive at a better understanding upon this subject than I now have. It seems to me that it is a matter of great doubt whether mortgages can be taxed under this system as it stands.

MR. BIGGS. Mr. President: I rise to a point of order. The point of order is that we have got no order.

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THE PRESIDENT. The gentleman from Kern will proceed.

MR. SMITH. Mr. President: It seems to me that this is a very weighty matter, and I think it should be left to the Legislature. The only objection I have to either of these propositions, the section as adopted and the amendment now proposed, is that it makes certain restrictions in the matter of deduction. I say that at one time the deduction might be considered well, and at another time it would not be well, and I therefore say that it should be left to the Legislature. Now, upon general principles, in an old settled community, where business is well settled in old channels, I should be opposed to the taxation of mortgages. Upon the general principle it is a false theory. But I see that there may be a necessity for taxing mortgages. Now, this section is passed upon the theory and in accordance with section five. I have studied section five very carefully, and it seems to me that if that section means anything, it means exemption of mortgages from taxation. It absolutely prohibits the taxation of money represented by mortgages. You tax the land simply, and you do not get at the money represented by mortgages. Now, sir, so far as I am personally concerned I do not care whether section five is adopted or not, but I come here pledged on the subject of taxing mortgages, and I could not vote for that section because I could not conscientiously vote for it under my pledges.

MR. WHITE. I rise to a point of order. The gentleman is discussing section five.

MR. SMITH. Section two and section five go together, and the two sections are necessarily connected. I am forced to discuss section five in connection with section two. I hope the gentleman will allow me to express my views without unnecessary interruption. You could not assess the money represented by mortgage, because it has already been exempted. You have already assessed it by assessing the mortgage, and by making that mortgage an interest in the land, you have simply made the man who loaned the money pay a certain proportion of the tax on the land, and you have exempted the money from taxation. The idea of taxing mortgages, it seems to me, is because they have a degree of tangibility. Other credits have been exempt because you could not get at them; but mortgages are of record; they have a degree of tangibility, and by that means you have a way of getting at that money that you would not otherwise have. Now, you admit that you have got to go somewhere else to get it, by making it an interest in the land. I say that section is a fraud. There is no necessity for these first words of section five. They are unnecessary, and they are mischievous.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President and Gentlemen: The proposition offered by Mr. Johnson as an amendment, or rather as a substitute for section two, is the result of deliberate care, study, and reflection, and in saying that I am in favor myself of the adoption of the substitute, I will call attention to one reason why I am in favor of it. Section one, as adopted by the Convention, provides: "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws."

Now, taxation shall be uniform upon the same class of subjects, but a certain class of subjects may be entirely exempt from taxation under section one, unless there is some other proviso to be found in the article that prevents the exemption of any character of property. Section one says that taxes shall be uniform upon the same class of subjects. That would allow the Legislature to positively exempt a certain class of subjects, or, in other words, a certain class of taxable property. Section two, as adopted yesterday, provides: "Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation," but it applies no limitation upon the powers of limitation to exempt any other class of subjects. I call your attention, gentlemen, to the fact that if my theory is correct, and I believe I am, though I may be wrong about it, taking the first section to which I have referred, which says all taxes shall be uniform upon the same class of subjects; and taking the second section, which enumerates what shall be exempt, but does not say that the Legislature shall exempt nothing but what is enumerated. It will allow the Legislature, and will give the Legislature full power to exempt any particular class of subjects. The question, therefore, is whether it is desirable, whether we will, by our votes, confer upon the Legislature the power of doing what we, ourselves, would not do. Whether we will say that all property in this State, unless it belonged to the State or some political subdivision of the State, or unless it belonged to the United States or be exempt according to the laws of the United States, shall be exempt from taxation, and that no other character of property shall be exempt. I am in favor of that proposition; I am in favor of exempting nothing, no class nor character of property, unless it belonged to the State or to the United States, or unless the laws of the United States, by express provisions, provide for the exemption.

MR. CROSS. Does not section two, as we have adopted it, provide that all property shall be taxed except so and so?

MR. BEERSTECHER. No.

MR. CROSS. Read the first part of it and see.

MR. BEERSTECHER. It says: "Laws shall be passed taxing all moneys, credits secured by mortgage or trust-deed, or unsecured, investments in bonds, franchises, and all other property, real and personal, according to its true value in money, except as hereafter provided; but the Legislature may authorize, except in case of credits secured by mortgage or trust deed, a deduction from credits of debts due to bona fide residents of this State."

MR. CROSS. How does that give a chance for exempting property?

MR. BEERSTECHER. I think there is a chance to exempt property. I have every reason to believe that the construction would be in favor of exempting other property. The section as presented by the gentleman from Sonoma, has a clear and positive definition upon the subject. It says: "All property shall be taxed to its true value in money. Property shall include credits, franchises, investments of money in bonds, and also everything known as property under the laws of this State. Debts due from bona fide residents of this State shall be reduceable from credits not secured by real or personal property. Growing crops, property exempt from taxation by the laws of the United States, this State, or any political subdivision of this State, shall be exempt from taxation, and no other property shall be exempt."

Credits, of course, include mortgages. Now, Mr. President, it may be urged upon this floor that the adoption of this section would prevent a rebate in the matter of mortgages, but if that should be urged, I respectfully call the attention of the gentleman upon this floor to section five. Section five relates entirely to mortgages, and settles the matter as regards rebates in reference to mortgages. The section, as presented by Judge Johnson, is clear, terse, positive, and definite. It says, that everything shall be taxed except what is enumerated, and that nothing else shall be exempted from taxation.

MR. WATERS. Mr. President: I think the majority of this Convention has long since made up its mind upon this question, and all that we want is to hear a thing read to know whether we want it or whether we do not want it. We hear an amendment read and we understand it. Now, feeling that way, I move the previous question.

Seconded by Messrs. Stuart, Hunter, O'Donnell, and Biggs.

The Convention refused to order the main question, on a division, by a vote of 39 ayes to 40 noes.

MR. REYNOLDS. Mr. President: I move that section two be referred to a special committee of nine, to be appointed by the Chair, with instructions to report to this Convention an amended section, and that the same be made the special order for Tuesday, at two o'clock P. M.

THE PRESIDENT. The gentleman will have to make it refer the entire report. He cannot refer one of these sections.

MR. DUDLEY, of Solano. Mr. President: I do not desire to make but a few remarks upon this subject at this time, but there are two propositions that are far superior to this one that has just been read. They have been read to the Convention but have not been acted upon, because of the fact that gentlemen have succeeded in getting in other propositions. I refer first to the one which has been called the Boggs proposition, and the other is the one read yesterday by Mr. Blackmer. Mr. Blackmer's proposition I believe is the best, but either one is vastly superior to the one now before the Convention. I hope that the Convention will vote down this and permit either one or the other of these propositions to be considered.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: This is as perfect an amendment as we can possibly get here. This amendment relieves the section from the objections urged against it on yesterday. It says in plain terms, not that the Legislature shall pass laws, etc., but that all property shall be taxed. There is a vast difference between saying that all property shall be taxed, and saying that the Legislature shall pass laws to tax property. When we were providing for the right of trial by jury, we did not say that the Legislature shall pass laws to provide for trials by jury. When we were desirous of saying that persons who were charged with crimes should be bailable, we did not say that the Legislature should pass laws to that effect. We said that all persons shall be bailable by sufficient sureties, not that the Legislature should pass laws allowing them to be bailable. If section two had been permitted to stand as it was adopted by the Committee of the Whole, there would have been at the next session of the Legislature the most formidable lobby that was ever assembled here. Every interest would have been combined that desired to prevent the passage of these laws. But as the proposition is now formulated, I think it is as perfect as it can be made. The language is broad: "Property shall include credits, franchises, investments of money in bonds; also everything known as property under the laws of this State." I cannot see any objection to those terms. The striking out of the word money would do no harm, but would do no good. The only difficulty that we have been laboring under is, upon the declaration of the Supreme Court, that choses in action were not property. That is the difficulty. The remedy applied here is certainly sufficiently broad to reach and remove that objection and place the question where it ought to be.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: The first proposition in the amendment under consideration is well enough of itself: "All property shall be taxed according to its true value in money;" but as to the definition, in the next subdivision, it says: "Also everything known as property under the laws of this State." Now, the Supreme Court decides that mortgages are not property, and that would be the interpretation as the law stands now.

MR. JOHNSON. It says that property shall include credits. It is credits that the Supreme Court has decided is not property, and the word credit is inserted there and also all property known under the laws of the State; so that it includes everything.

MR. LARKIN. There are three distinct classes of property mentioned, and aside from that you must go to the statutes of the State to find out the definition of what is property. I think it is preposterous to put a thing of that kind into the Constitution. This section should be self-explaining. There should be a clear definition of property without referring to what is declared to be property under the laws of this State, or under the laws of any other State.

Another proposition here that I object to: "Debts due bona fide residents of this State shall be deductible from credits not secured by real or personal property." That proposition, in my mind, is objectionable. That proposition was voted down this morning on the resolution of Mr.

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Kelley, from Yolo, by a vote from two to one. To my mind it is clear that the only proposition that we ought to adopt is a proposition which has not been allowed to come before the Convention, and that is the Boggs proposition. I shall vote against this, and vote for that whenever I get a chance.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I think, sir, of all the propositions that have been presented this is perhaps the most faulty, and I will try to explain. In the first place, it undertakes to say that all property shall be taxed according to its true value in money, and then it says: "Property shall include credits, franchise, investments of money in bonds; also everything known as property under the laws of this State." I presume that where it undertakes to describe what property is in terms, it may be said it excludes all other. Now the original section two said: "All property, including franchises, capital stock of corporations, or joint stock associations, and solvent debts." Why the capital stock of corporations and joint stock associations is left out I am unable to determine. I applied to the gentleman and he says it is in section seventeen, but I turn to section seventeen and that is stricken out. I turn to section sixteen and that has the word franchise without the capital stock of corporations. So that the capital stock of corporations is substantially excluded. Now it says "everything known as property under the laws of this State." Now what is known as property under the laws of this State? Who will undertake to say what is known as property under the laws of this State? If by the laws of this State property is defined, why by the laws of this State that definition may be changed and there is a door open to exempt anything from taxation that the Legislature may declare is not property within the meaning of the law. Why should not the Legislature pass a law to say that property of corporations shall not be deemed property under the laws? Why can they say that lands shall not be deemed property; that cattle, sheep, horses, and everything within the range of the jurisdiction protected by the sovereignty of the State of California is exempt from taxation because they declare that it is not property within the meaning of these sections. Now, sir, if you pass this section in the form it is, you take away the possibility of exempting every piece of property in the State from taxation.

Now, in regard to the other matter—about this offsetting of debts and credits. Never was a greater fallacy promulgated than that of offsetting against property that ought to be taxable some imaginary thing in the shape of a debt. It is well known that money lenders manage to prove that they owe more money than they own. Take the case of the late Mr. Reese. He was never taxed, because he always owed really more than he owned. What is to prevent any man giving his note for twenty thousand dollars; borrowing the money, if you choose; keeping that money for three days, until the Assessor passes, and then taking up his note? There is offsetting credits and debts, and it is the most perfect machinery for a man to avoid taxation. I am in favor of taxing real estate, personal estate, money, and everything that a man is worth. Why not go at it in some direct mode, without this circumlocution, without ambiguous terms that no two men agree upon the interpretation of. Why, sir, I have been here sitting and listening to the debates on this matter, and I have been desirous of seeing some few rays of common sense thrown into this Convention, that some intelligent purpose may come out that we may give to the people of this State as a rule and guide. Why not go at it direct, and tax property, real estate, money in hand, money that may be reduced to possession, and everything that a man is worth, and when you have got all the property in the State taxed, what more can you tax? If the law is so fixed on a certain day, the Assessor goes to a man and says: "Mr. A, how much real estate have you?" Puts it down. "How much personal property have you?" Puts it down. "How much money have you?" Puts it down. "How much money have you loaned out." Puts it down. "Do you swear solemnly that is all the property you possess?" He swears. If he swears falsely, confiscate his property to the extent of twenty-five or fifty per cent., or indict him for perjury. That is a direct mode of taxing property; taxing substance, not shadows; taxing realty, instead of something intangible. According to my notion it would be the most direct mode of getting at it. On the debtor and credit system you allow a man to escape taxation. I am opposed to it.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: It is well known to every gentleman that from eighteen hundred and fifty-one up to the decision of the Supreme Court, with the exception of two years we acted upon the principle of rebate. There was no complaint about taxes at all until the decision of the Supreme Court. Other States have operated under it, and we have operated under it in this State, and there was no ground for complaint. If the gentleman would read the whole report of the Committee of the Whole on revenue and taxation, he would find that in the twelfth section it is required that the assessment shall be made of the property owned by each person at twelve o'clock meridian of the first Monday in March, in each year. It would do a man no good to borrow money for three days, as Judge Hager says. He would have the money and be taxed on it, or else he would not have the debt to offset. The money power is very much opposed to this thing of taxing mortgages and solvent debts, and if you do, they wish to place it upon the farmer. I trust in Almighty God that this Convention will not stultify itself and go back on what it has done. We have time and time and again said that there should be a rebate, and I hope that we will stick to it and not stultify ourselves by going back on it.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I looked upon this proposition with some suspicion in the outset, because it was not as thoroughly examined as the other proposition was. I have taken the pains to examine this proposition very critically and carefully, and after a careful consideration and comparison with the statute as it now stands, I am satisfied that it is as clean cut a proposition upon the ideas that this Convention have adopted, as it is possible to conceive or arrive at. Now, what is property under the laws of this State? I call your attention to the definition as given in the Political Code: "The word 'property,' includes both real and personal property. The words 'real property' are coextensive with lands, tenements, hereditaments. The words 'personal property' include money, goods, chattels, things in action, and evidences of debts." How much broader do you want it. There is nothing left out. It covers the whole ground.

MR. CROSS. Why is it, then, that when our present Constitution declares that all property shall be taxed, that all these different classes of property escape taxation?

MR. HERRINGTON. Because it had a meaning in the Constitution which it did not have in the statute. What the Supreme Court decided was property under the Constitution was not what was property under the Act of the Legislature for the purposes therein contemplated; yet for the purposes contemplated by the statute, it might be just as much property as anything in the world, although it might not be included in the constitutional definition of property. But here we propose to make what is now understood in the statute to be property, property under this Constitution, and by so doing we include everything.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. President: I am opposed to this amendment, for several reasons. One is, that I do not think the definition of "property" sufficiently comprehensive or sufficiently explicit. I do not think that it is safe to put in a definition that compels a party to go somewhere else to find out what is meant by it. It is better to give a full definition in the section itself, and that can be done in very few words. It has been done in some of the propositions which have been formulated as substitutes for this section two. I have one here which was formulated by the gentleman from Santa Clara, and which, to my mind, contains a much better definition than that offered by the gentleman from Sonoma, and for that reason I prefer it. I shall offer it if I get an opportunity. It is as follows:

"All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed."

Now, there is a perfect, comprehensive, unmistakable definition of the term "property," as used here; broad enough to include all kinds and classes of property, and not subject to construction at all. I propose to add to that:

"Provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within in this State, shall be exempt from taxation."

While I am willing to permit the Legislature, if they choose, to allow rebate in favor of those who owe debts to citizens of this State, I am opposed to putting that into the Constitution. I am opposed to the principle of rebate. I do not think the Assessors should strike a balance sheet for the people of the State. Very few people who are in the habit of keeping accounts, know how much they owe. It is impossible to detect falsehood in those cases. It offers too much temptation for a man to offset against his credits, imaginary debts, or debts which are founded upon no consideration, or could not be enforced anywhere. But if it is the sense of this Convention that that rebate should be made, I submit to it, but I insist that the present substitute offered for section two is not sufficiently explicit in its definition, and therefore I hope it will be voted down.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope that this amendment will not be adopted. I am opposed to the principle of rebate, and vote against it on account of rebate. I believe that the mortgages should be taxed, and I believe that all evidences of indebtedness should be taxed, and that is the opinion of a majority of this Convention. The only difference with us is as to how the evidences of indebtedness should be taxed. We have been struggling here, all the time, to find out some method by which we could tax these credits and have it equitable between the two parties, easy of adjustment, without any circumlocution office through which we must go to arrive at it, and we have not found the key to that yet. We shall wander in this maze of difficulties as long as we attempt to make any kind of settlement between these parties, in the Constitution, in regard to these evidences of indebtedness. Now, sir, the proposition to tax all property according to its true value in money, has been determined upon by a vote of this Convention. The proposition that these evidences of indebtedness shall be taxed, has been passed upon by a large majority of this Convention, and there is no possibility of going behind it. Now, sir, if we attempt to tax them as property we have got to determine their value as credits, and there will come the difficulty. If we attempt to make a reduction we have got to make it so that the land shall be taxed at its true value in money, or else do a gross injustice to the man who holds the lien, because the credit must be taxed upon its full value in money. Now, sir, there is an injustice to the man who holds the indebtedness because he must pay his tax upon the full amount, while the man whose land is taxed could put in one half or three quarters of its value; that is the condition of things we can never get behind. The landed property of this State never will be taxed at its full value. Secondly, we can never get equality under this system in that direction. Now, sir, the solution of the question is, to tax all visible, tangible property according to its value, to be ascertained by law, and then to provide some other system by which to tax

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these evidences of indebtedness, and there is no way to reach them except we do it by an income tax. Now, gentlemen, many oppose that proposition, and it may be a bugbear to them, but they will have to come to it before we approach anything like equality in our taxation. It is said that it is odious, that it cannot be got at, that property will hide; but, sir, it does that to-day. Now, sir, we can say that the income derived from these credits shall be taxed, and in my judgment, there is no other way to get anything like equality. Thereby we will increase the amount of property on the assessment roll, and by that means, reduce the rate per cent. upon the property that has borne the taxation until it is almost run into the ground. I hope there will be an opportunity to present a proposition of that kind, and if this amendment is voted down, I propose to offer a proposition such as I read here yesterday, and which is in the Record-Union this morning. I do not suppose the Convention will take it, because it is an income tax, but when you have tried everything else you must come to it at last.

MR. WHITE. Mr. President: I hope this amendment as now before the Convention will be adopted, and that we will cease all this dissension. We have gone over it over and over again. There are other points that I would like, but I have no hope of seeing them carried. I hope that we will at once take a vote upon it.

MR. TULLY. Mr. President: I hope, sir, that this amendment will be voted down. I have examined it with some care, and I find, with due respect to the gentleman who offered it, that it is a kind of rehash of all that has been before the Convention, good, bad, and indifferent, the bad and indifferent predominating. In other words, it is meaningless in many things—that is, in my opinion. Now, I came here for the purpose, and stated it early in this Convention, of taxing all the property in the State, and defining what property was; that notes and bonds, and evidences of indebtedness, should be taxed without any rebate. I have supported that measure because I think it is right; because I think public opinion demands it; but, at the same time, if we cannot get that I am willing to take the next best thing that we can get. I am willing to define property and leave it to the Legislature to make such exemptions as they may think fit. I understand that an amendment to that effect will be offered, provided that this is voted down. I hope that this Convention will vote this down.

MR. REYNOLDS. Mr. President: I move that section two be refered to a special committee of nine, to be appointed by the Chair, with instructions to report to this Convention on Monday, and that the same be made a special order for Tuesday, at two P. M.; and that the Convention do now proceed to the consideration of the report of the Committee of the Whole on suffrage. According to the ruling of the Chair, to adopt this motion would carry the whole report, therefore I insert the provision that the Convention now proceed to consider the report of the Committee on Suffrage.

THE PRESIDENT. The Chair has decided that motion to be out of order. The gentleman can only move to refer the whole report.

MR. REYNOLDS. Then I move to refer the whole report.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Sonoma.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Wyatt, Johnson, Brown, West, and Huestis.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Herrington,	Rolfe,
Barbour,	Howard, of Los Angeles,	Stedman,
Beerstecher,	Howard, of Mariposa,	Steele,
Bell,	Johnson,	Stevenson,
Brown,	Kleine,	Sweasey,
Condon,	Mansfield,	Swenson,
Evey,	Moreland,	Waters,
Freeman,	Nason,	Webster,
Freud,	Neunaber,	West,
Gorman,	O'Sullivan,	White,
Harvey,	Rhodes,	Winans—33.

NOES.

Andrews,	Hilborn,	Reed,
Barry,	Hitchcock,	Reynolds,
Biggs,	Holmes,	Ringgold,
Blackmer,	Huestis,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Jones,	Shurtleff,
Burt,	Kelley,	Smith, of Santa Clara,
Caples,	Kenny,	Smith, of 4th District,
Charles,	Keyes,	Smith, of San Francisco,
Cross,	Lampson,	Soule,
Crouch,	Larkin,	Stuart,
Davis,	Larue,	Terry,
Dowling,	Lavigne,	Thompson,
Dudley, of Solano,	Lewis,	Tinnin,
Estey,	Lindow,	Townsend,
Farrell,	McCallum,	Tully,
Filcher,	McComas,	Turner,
Garvey,	McConnell,	Tuttle,
Glascock,	McCoy,	Vacquerel,
Hager,	McNutt,	Wellin,
Hale,	Miller,	Wickes,
Hall,	Morse,	Wilson, of Tehama,
Harrison,	Murphy,	Wyatt,
Heiskell,	Nelson,	Mr. President—74.
Herold,	O'Donnell,	

MR. TERRY. Mr. President: I send up a substitute for section two.

THE SECRETARY read.

"SEC. 2. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed; provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State."

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from San Joaquin.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Brown, Beerstecher, O'Donnell, Terry, and Reynolds.

The roll was called and the amendment adopted by the following vote:

AYES.

Andrews,	Herold,	Neunaber,
Ayers,	Herrington,	O'Donnell,
Barbour,	Hitchcock,	O'Sullivan,
Barry,	Holmes,	Rolfe,
Beerstecher,	Howard, of Los Angeles,	Schell,
Bell,	Howard, of Mariposa,	Schomp,
Biggs,	Huestis,	Shurtleff,
Boucher,	Hughey,	Smith, of Santa Clara,
Brown,	Hunter,	Smith, of 4th District,
Burt,	Johnson,	Smith, of San Francisco,
Caples,	Kenny,	Soule,
Condon,	Keyes,	Stedman,
Crouch,	Lampson,	Steele,
Dowling,	Larkin,	Sweasey,
Estey,	Larue,	Swenson,
Evey,	Lavigne,	Terry,
Farrell,	Lewis,	Turner,
Filcher,	Lindow,	Tuttle,
Freeman,	Mansfield,	Vacquerel,
Garvey,	McCallum,	Waters,
Glascock,	McComas,	Webster,
Gorman,	McConnell,	Wellin,
Grace,	McNutt,	West,
Hager,	Moreland,	White,
Harrison,	Murphy,	Wilson, of Tehama,
Harvey,	Nason,	Mr. President—80.
Heiskell,	Nelson,	

NOES.

Blackmer,	Kelley,	Shafter,
Boggs,	Kleine,	Stevenson,
Charles,	McCoy,	Stuart,
Cross,	Miller,	Thompson,
Davis,	Morse,	Tinnin,
Dudley, of Solano,	Reddy,	Townsend,
Freud,	Reed,	Wickes,
Hale,	Reynolds,	Winans,
Hall,	Rhodes,	Wyatt—29.
Jones,	Ringgold,	

THE PRESIDENT. The question recurs on the amendment of the Committee of the Whole as amended by the Convention.

Adopted.

LICENSES.

MR. WINANS. Mr. President: I move to reconsider the vote by which the Convention concurred in the striking out of section eight of the article on revenue. Section eight, as originally reported by the committee, reads as follows:

"SEC. 8. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous or malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control. But the Legislature may, by law, impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges."

Now, sir, that section was rejected by the Committee of the Whole, and it was improperly rejected, because you cannot apply a license tax without discrimination; you cannot apply it so as to fairly tax those who are sought to be taxed; you cannot apply it so as to prevent injustice by way of too great a taxation in some cases, and too little taxation in others. What is worse still, it never reaches the person sought to be taxed, but the taxation falls upon the consumer. I insist upon it, that the principle is wrong, and I hope, therefore, that the Convention will reconsider its action of yesterday, and pass the section as reported by the committee.

MR. ROLFE. Would it not be wrong, also, to license the manufacture and sale of wine?

MR. WINANS. Yes, sir.

MR. ROLFE. Well, this permits that.

MR. STUART. Mr. President: I am opposed to the reconsideration of this section. It is stricken out and left to the Legislature. It has been twice stricken out; first, by the Committee of the Whole, and then by the Convention. I do not see why we should interfere with the local laws in the municipalities, when they will have to legislate for

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themselves. I do not see where the gentleman sees anything in that that is bad, onerous, or wrong. It leaves enough to be taxed. Everything is subject to the Legislature. They have an inalienable right to raise revenue from any taxation not prohibited by the Constitution. I hope it will remain as it is. I move that the motion be laid on the table.

The ayes and noes were demanded by Messrs. Winans, Biggs, Brown, Freud, and Hager.

The roll was called, and the motion to lay on the table prevailed by the following vote:

AYES.

Ayers,	Hager,	Murphy,
Barbour,	Hale,	Nelson,
Beerstecher,	Harrison,	Neunaber,
Bell,	Heiskell,	Reed,
Boggs,	Herold,	Rolfe,
Boucher,	Hitchcock,	Schomp,
Brown,	Holmes,	Shurtleff,
Burt,	Howard, of Los Angeles,	Smith, of 4th District,
Caples,	Howard, of Mariposa,	Smith, of San Francisco,
Charles,	Hughey,	Soule,
Condon,	Hunter,	Steele,
Cross,	Johnson,	Stevenson,
Crouch,	Kenny,	Stuart,
Davis,	Lampson,	Swenson,
Dowling,	Larkin,	Terry,
Dudley, of Solano,	Larue,	Thompson,
Estey,	Lavigne,	Townsend,
Evey,	Lewis,	Tully,
Farrell,	Lindow,	Tuttle,
Freeman,	McCallum,	Vacquerel,
Garvey,	McCoy,	Waters,
Glascock,	McNutt,	West,
Gorman,	Miller,	Mr. President—70.
Grace,		

NOES.

Andrews,	Keyes,	Ringgold,
Biggs,	Kleine,	Schell,
Blackmer,	Mansfield,	Smith, of Santa Clara,
Filcher,	McComas,	Stedman,
Freud,	McConnell,	Sweasey,
Harvey,	Moreland,	Turner,
Herrington,	Morse,	Webster,
Hilborn,	Nason,	Wellin,
Huestis,	O'Donnell,	White,
Jones,	Reynolds,	Winans,
Kelley,	Rhodes,	Wyatt—33.

MR. LARUE. I gave notice on yesterday that I would move to amend Rule Thirty-five.

MR. MCCALLUM. Mr. President: I rise to a point of order. My point of order is that the hour having arrived nothing is in order except taking a recess.

THE PRESIDENT. The point of order is not well taken.

At twelve o'clock and thirty minutes P. M. Mr. Huestis offered the following resolution:

Resolved, That this Convention do now adjourn until Monday, February tenth, eighteen hundred and seventy-nine, at two o'clock P. M.

Upon which the ayes and noes were demanded by Messrs. Freud, West, Wilson of Tehama, Larue, and O'Sullivan.

The roll was called, and the resolution lost by the following vote:

AYES.

Boggs,	Hughey,	Nelson,
Burt,	Jones,	Reed,
Charles,	Kelley,	Rhodes,
Cross,	Keyes,	Rolfe,
Dowling,	Kleine,	Schell,
Dudley, of Solano,	Lavigne,	Shafter,
Freeman,	Lindow,	Stuart,
Garvey,	Mansfield,	Sweasey,
Glascock,	McConnell,	Thompson,
Hager,	McCoy,	Townsend,
Hale,	McNutt,	Turner,
Hall,	Miller,	Vacquerel,
Harvey,	Morse,	Winans,
Huestis,	Murphy,	Mr. President—42.

NOES.

Andrews,	Gorman,	Moreland,
Ayers,	Grace,	Nason,
Barbour,	Harrison,	Neunaber,
Barry,	Heiskell,	O'Sullivan,
Bell,	Herold,	Reynolds,
Biggs,	Herrington,	Ringgold,
Blackmer,	Hitchcock,	Schomp,
Boucher,	Holmes,	Shurtleff,
Brown,	Howard, of Los Angeles,	Smith, of Santa Clara,
Caples,	Howard, of Mariposa,	Smith, of 4th District,
Condon,	Hunter,	Smith, of San Francisco,
Crouch,	Kenny,	Soule,
Davis,	Lampson,	Stedman,
Estey,	Larkin,	Steele,
Evey,	Larue,	Stevenson,
Farrell,	Lewis,	Swenson,
Filcher,	McCallum,	Terry,
Freud,	McComas,	Tinnin,
Tully,	Wellin,	White,
Tuttle,	West,	Wilson, of Tehama,
Waters,	Wickes,	Wyatt—64.
Webster,		

At twelve o'clock and forty minutes P. M. Mr. Ringgold moved to adjourn.

Upon which the ayes and noes were demanded by Messrs. White, West, McCallum, Huestis, and Hager.

The roll was called, and the motion prevailed by the following vote:

AYES.

Beerstecher,	Huestis,	O'Sullivan,
Blackmer,	Hughey,	Reed,
Brown,	Jones,	Rhodes,
Burt,	Kelley,	Ringgold,
Charles,	Keyes,	Rolfe,
Cross,	Kleine,	Schell,
Dowling,	Lavigne,	Smith, of 4th District,
Dudley, of Solano,	Lindow,	Soule,
Estey,	Mansfield,	Steele,
Garvey,	McConnell,	Sweasey,
Hager,	McCoy,	Townsend,
Hale,	McNutt,	Turner,
Hall,	Miller,	Vacquerel,
Harvey,	Murphy,	Wickes,
Herrington,	Nelson,	Winans,
Hilborn,	Neunaber,	Wyatt,
Howard, of Mariposa,	O'Donnell,	Mr. President—51.

NOES.

Andrews,	Harrison,	Shurtleff,
Ayers,	Heiskell,	Smith, of San Francisco,
Barbour,	Hitchcock,	Stedman,
Barry,	Holmes,	Stevenson,
Bell,	Howard, of Los Angeles,	Swenson,
Biggs,	Hunter,	Terry,
Boucher,	Kenny,	Thompson,
Caples,	Larkin,	Tinnin,
Condon,	Larue,	Tuttle,
Davis,	Lewis,	Waters,
Farrell,	McCallum,	Webster,
Filcher,	McComas,	Wellin,
Freeman,	Moreland,	West,
Freud,	Reynolds,	White,
Gorman,	Schomp,	Wilson, of Tehama—45.

ADJOURNMENT.

And at twelve o'clock and fifty minutes P. M. the President declared the Convention adjourned to Monday, February tenth, at nine o'clock and thirty minutes A. M.

ONE HUNDRED AND THIRTY-SIXTH DAY.

SACRAMENTO, Monday, February 10th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Herrington,	Reynolds,
Ayers,	Hitchcock,	Rhodes,
Barbour,	Holmes,	Ringgold,
Barry,	Howard, of Los Angeles,	Rolfe,
Barton,	Howard, of Mariposa,	Schell,
Beerstecher,	Huestis,	Shurtleff,
Bell,	Hughey,	Smith, of Santa Clara,
Biggs,	Hunter,	Smith, of 4th District,
Blackmer,	Johnson,	Smith, of San Francisco,
Boucher,	Jones,	Soule,
Brown,	Kelley,	Stedman,
Burt,	Kenny,	Steele,
Caples,	Keyes,	Stevenson,
Charles,	Lampson,	Stuart,
Condon,	Larkin,	Swenson,
Cross,	Larue,	Swing,
Crouch,	Lewis,	Thompson,
Davis,	Lindow,	Tinnin,
Dowling,	Mansfield,	Townsend,
Doyle,	McCallum,	Tully,
Estey,	McComas,	Turner,
Evey,	McConnell,	Tuttle,
Farrell,	McCoy,	Vacquerel,
Filcher,	McNutt,	Van Voorhies,
Freeman,	Moffat,	Waters,
Freud,	Moreland,	Wellin,
Garvey,	Nason,	West,
Gorman,	Nelson,	Wickes,
Grace,	Neunaber,	White,
Harrison,	Noel,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wilson, of 1st District,
Herold,	O'Sullivan,	Wyatt.

ABSENT.

Barnes,	Berry,	Campbell,
Belcher,	Boggs,	Casserly,

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Chapman,	Harvey,	Prouty,
Cowden,	Hilborn,	Pulliam,
Dean,	Inman,	Reddy,
Dudley, of San Joaquin,	Joyce,	Reed,
Dudley, of Solano,	Kleine,	Schomp,
Dunlap,	Laine,	Shafter,
Eagon,	Lavigne,	Shoemaker,
Edgerton,	Martin, of Alameda,	Sweasey,
Estee,	Martin, of Santa Cruz,	Terry,
Fawcett,	McFarland,	Van Dyke,
Finney,	Miller,	Walker, of Marin,
Glascock,	Mills,	Walker, of Tuolumne,
Graves,	Morse,	Webster,
Gregg,	Murphy,	Weller,
Hager,	O'Donnell,	Wilson, of 1st District,
Hale,	Overton,	Winans,
Hall,	Porter,	Mr. President.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Morse.

Leave of absence for two days was granted Mr. Sweasey.

Three days leave of absence was granted Messrs. Winans and Martin of Santa Cruz.

THE JOURNAL.

THE PRESIDENT. If there be no objection, the reading of the Journal will be dispensed with, and the same approved.

TAXATION—POLL TAX.

THE PRESIDENT. The Convention will resume consideration of the article on taxation. The question is on concurring with the amendment of the Committee of the Whole, striking out section nine. The Secretary will read the section.

THE SECRETARY read:

"SEC. 9. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, for school purposes, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund."

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I am opposed to concurring with the Committee of the Whole in striking out this section. My chief objection arises from the fact that the poll tax is about the only mode of taxation that we have that will reach the Chinamen. It is well known that they have little property—very little, indeed—and that they almost entirely escape taxation, while they impose upon the Government of the State a very large burden in the way of criminal prosecutions. Now, if it really be the desire of the gentlemen on this floor to get rid of the Chinamen, I am utterly unable to see why in the world they should object to a poll tax, as it is the only mode by which they can be reached. I know that it is argued that a poll tax is wrong in principle because it imposes, as they say, a tax upon the privilege of living—a tax upon the productive energy and industry of the country. But, as in other cases, so in this, there are always two sides to the question. Now, if it be true as I assume, that persons and things receive protection from the Government, it must be true that for that protection there is something due the Government. Persons, as well as property and things, are protected, and why? Speaking, now, from general principles of equity, and right, and justice—why should not a person pay the Government, or if not the Government, at least pay something for the protection that he receives? Every gentleman, and particularly those of the legal profession, are aware that a person receives an amount of protection altogether disproportionate to the amount of revenue that is derived from poll taxes. In fact, the poll tax is little more than an assertion of the principle that Government is entitled to an equivalent for the protection that it affords. The amount is trifling; it is very small. I believe, applying it practically in California, we find that in reaching the Chinamen it reaches a source of revenue that can be reached in no other way. I hope that this Convention will refuse to concur in striking out that section. It is right in principle; it is right in practice. It has worked well in California. It has been a rule of law since, I believe, the organization of the Government. We have heard no complaint against it, and it does seem to me that any man who has patriotism enough to deserve the protecting care of the Government, should be willing to contribute a small mite of two dollars for that protection. There are men who spend their money as fast as they earn it, and when they are disabled by sickness or age, they throw themselves upon the public and must be provided for by the taxpayer. Now, is it not right, is it not equitable, is it not just, that they should contribute this small mite of two dollars to provide for themselves in the future? It does seem to me that gentlemen on the other side of the house, who are so anxious to get rid of the Chinamen, would hesitate before they would take away from the State its only mode of reaching them.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: The argument of the gentleman is, perhaps, hardly fair, when it seems to assume that the passage of this section is necessary to enable the State to levy poll taxes. No such necessity exists. No provision similar to this has been in the last Constitution, and I believe we have had poll tax upon poll tax. Now, the question whether there should or should not be a poll tax, is a question upon which people differ. It seems to me that this is a safe question to leave to the legislative discretion, to be exercised when the Legislature pleases, and to be dispensed with when the Legislature pleases. I shall therefore vote against the proposition, and in favor of the report of the Committee of the Whole, leaving the whole question to the Legislature, where it may be safely left, and where I think it properly belongs.

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I am in favor of retaining the section. I am in favor of it, however, on different grounds from the Doctor from Sacramento. I want it to be so arranged in our Constitution, if we have got to legislate for them, that all white men shall produce a poll tax receipt before they vote. If that is added, then I will be perfectly satisfied. The side of the house that I belong to pay their road and poll taxes. What the country wants is to have those that vote pay, and not those that don't vote. I am willing to leave it with the Legislature, but if you want it in the Constitution I think it should be a little stronger.

REMARKS OF MR. LAMPSON.

MR. LAMPSON. Mr. President: It seems to me that if there is any section that should appear in the Constitution, this is one of them. It reaches a class of people that are willing to assist in the education of our children; and not only that, but it reaches another class—it reaches the class of people who never would be willing and who never do pay a cent of taxation, and during our whole session here we have taken a course that is entirely in favor of such assistance. And while we look at it in this light, I would defy any gentleman of this Convention to point out a single objection to placing this as a provision in the Constitution. By this section these people are compelled to pay into the treasury of the county the sum of two dollars, which is appropriated for an object that every one of us in this Convention most heartily indorse, that of education. To be sure, the Legislature may continue to pass laws and make it compulsory upon these people to do it; but what objection is there to placing it as an abiding principle in the Constitution? It places in our treasury an amount that does a great deal toward educating the poor. Not that any of us care anything particular about paying this small sum, but every individual throwing in two dollars tells a great deal at the end of the year in supporting and educating the poor.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: I shall vote to concur with the Committee of the Whole in striking out that section. I am totally opposed to a poll tax, and at the proper time I shall propose a section, that there shall be no poll tax. A poll tax is a tax on human existence, and nothing else. Poor men pay taxes enough now. They are indirectly taxed for everything they eat. I say that property should pay the tax to support Government. Property receives all the protection of Government. Human life receives nothing, or very little protection. All the police power of the State is paid to secure the protection of property. This poll tax business is a relic of kingly tyranny and barbarism, and nothing else. It has not existed for four hundred years in England—since the rebellion of Watt Tyler. They had to abolish it. There is no poll tax in England to-day. I know that there is in the Constitutions of several States of the Union a distinct declaration that there shall be no poll tax. We consider ourselves in California as far advanced in civilization as any country in the world. Why should we not do away with this business of taxing a man's life and existence?

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: It seems to me that some of the gentlemen are laboring under a mistake. If we desired that no poll tax should be levied hereafter, it would be important that we should make that a declaration in the Constitution; but if we desire that there may be a poll tax levied, it is certainly better to leave it as it has been, to the Legislature of the State. They argue this proposition as though if we should refuse to retain it there would be no poll tax; and yet, sir, to-day, I believe every gentleman in this Convention has, within the last year, if he is a good taxpayer, paid at least two dollars for school and hospital poll tax. The only difference here, is increasing slightly the amount we now pay as a school poll tax. I pay every year six dollars poll tax. I think that is enough. If it is not, the public sentiment will, as it has always done, regulate these matters, and the Legislature, in accordance, can change it. If it is too much, the Legislature can still change it; and it can regulate this matter as the public may require or desire. There is where this power ought to be placed. There are some things that ought to be flexible to a certain extent, and, in my judgment, this is one of them.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope the Convention will not stultify itself by adopting this section. Now the Convention has declared a principle of taxation which is that all property shall be taxed, and has adopted the ad valorem principle. You have said that by adopting sections one and two. Now, sir, a departure of this kind would be an absurdity on the face of it. You propose to tax a person's head. It is not according to the value of it; it is not according to what is in it, nor according to what is on it; but simply because he has got a head you want to impose a tax upon it. You tried here to have license taxes imposed, on the ground of public policy. The Convention rejected it, and so you will find with every attempt to depart from the principle you have adopted. The gentlemen talk about a man paying this tax on account of a protection. That is all right, but the error of the gentleman from Sacramento is that he takes too narrow a view of the subject. He concludes that the man who takes the coin up to the Collector's office is the only man that pays any tax. The great producing class may pay all the taxes and not one single one of them go near the Collector's office. I have contended that there is no such thing as equal taxation, but I have never denied that we ought to aspire to equal taxation. The poll tax is the most unjust and thieving tax that ever was imposed. I speak,

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sir, from experience, and I believe that we ought to put into this Constitution a prohibition against the Legislature imposing any such tax.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I do not propose to take up the time of this Convention in discussing this question. We discussed enough in Committee of the Whole. I must say that I am surprised at gentlemen taking the position that Colonel O'Sullivan does. Every American citizen that has not got patriotism enough about him to pay the paltry sum of two dollars poll tax for the education of the children in the public schools, does not deserve the name of an American citizen. I appeal to the gentleman from San Francisco, if you want to reach the Chinamen that you have been making war on, to adopt this section. We propose to levy a tax for school purposes to reach these Mongolian Chinamen.

MR. BARBOUR. We expect to get them out of here.

MR. BIGGS. I expect that you won't get them out soon if you exempt them from this tax. I want to put it in the Constitution so that every man in the country will pay two dollars to the support of the schools. I do not want any more poll taxes. I am able to show that the State would receive into the general school fund two hundred thousand dollars from the Chinamen alone. I make my living by the sweat of my brow. I toil in the warm sun. My men, forty or fifty of them, never objected to paying their poll tax, and it would be a pleasure now to them to pay a poll tax and let it go into the general school fund.

MR. STUART. Are you in favor of voters showing their tax receipt before they vote?

MR. BIGGS. I allow every American citizen the right to vote, and I am opposed to Chinamen voting. I want to tax them out of the country, damn 'em; and the sooner we turn them out the better. [Laughter.]

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope that the Convention will not concur in the recommendation of the Committee of the Whole. We have gone on and stated that all property shall be taxed. We have defined what property is. Then we have provided for an exemption, and in the last section of this article we have provided for an income tax. Now, sir, it may be the construction put upon this, striking out that section, that having enumerated all these kinds of property that shall be taxed and made the exemption, and having an income tax, that it was the intention of this Convention to take off the poll tax. Now, sir, in the old Constitution there was no description of property at all. I contend that if we wish to leave it to the Legislature that we should at least say in this article that the Legislature should have the power to levy this poll tax, so that we may be sure that they have the power. Otherwise, having said that all property should be taxed, define what property is made the exemptions, and then provide for an income tax, the construction may be that we cannot put on poll tax.

REMARKS OF MR. LINDOW.

MR. LINDOW. Mr. President: I am opposed to a poll tax, but not for the reason that I have to pay it myself, but I have only to reply to the remarks that Dr. Caples made here. He says, that was the direct way to catch the Chinamen. That is only going to throw a blind over people's eyes. That is not a direct tax. They had a law that the poll tax had to be paid when the personal property tax was paid. Well they got to work and went to the newspapers and proceeded to change the laws. This catching the Chinamen with these poll taxes is only a fraud, and nothing else. There is not one tenth of the poll taxes paid, and then what is collected goes into the Tax Collector's pocket. I know that in the third ward fifty thousand dollars worth of tax receipts could not be found. They had the Tax Collector arrested, and then it could not be found. It is a fraud on the taxpayers. A man gets into a situation and a poll tax collector comes in and makes him pay when the man has not earned a cent at all. I think it is cruel to go and make a direct tax upon a man's head. A man keeps a little bit of a place or a store, and he has got to pay the tax.

MR. LARKIN. Mr. President: I am opposed to this provision, and the effect of it. At the present time, in many of the counties, there are poll taxes levied. In the County of El Dorado there are three taxes—one dollar and fifty cents hospital tax, three dollars road tax, and two dollars school tax. I believe that it should be left where it is now. I believe that in the management of county affairs, that the Board of Supervisors of the county should have the right to levy the tax for themselves.

MR. BIGGS. This is a State poll tax.

MR. LARKIN. It amounts to very little what form you get the tax in if the county supports itself. I think it should not be in the Constitution. The section, as it now stands, would be construed to limit the Legislature to a poll tax not to exceed two dollars.

MR. MORELAND. Not less.

MR. LARKIN. Not less than two dollars, but it would indicate that that would be the sum. I am in favor of striking out the section and leaving it to the Legislature.

MR. MANSFIELD. Mr. President. I hope that the provision will not be stricken out. The amount of the School Fund raised last year was two hundred and forty-four thousand dollars. A large portion of this fund will be paid by Chinamen and others who will otherwise go scot free. I hope the provision will be retained.

Messrs. Moreland, Stuart, Lampson, Wyatt, and Wilson of Tehama demanded the previous question, which was ordered by the Convention.

Upon concurring in the report of the committee, the ayes and noes were demanded by Messrs. Barbour, Swenson, Lindow, Wyatt, and Lampson.

The roll was called, and the recommendation of the committee concurred in by the following vote:

AYES.

Ayers,	Harrison,	Ringgold,
Barbour,	Herold,	Rolfe,
Barry,	Herrington,	Smith, of Santa Clara,
Beerstecher,	Jones,	Smith, of 4th District,
Bell,	Kenny,	Smith, of San Francisco,
Burt,	Kleine,	Soule,
Condon,	Larkin,	Stedman,
Cross,	Larue,	Stuart,
Crouch,	Lindow,	Swenson,
Dowling,	McCallum,	Swing,
Doyle,	McCoy,	Turner,
Evey,	McNutt,	Vacquerel,
Farrell,	Moffat,	Waters,
Filcher,	Nelson,	Wellin,
Freeman,	Neunaber,	West,
Freud,	Noel,	Wicks,
Gorman,	O'Sullivan,	White,
Grace,	Reynolds,	Wyatt—54.

NOES.

Andrews,	Huestis,	Rhodes,
Biggs,	Hughey,	Schell,
Blackmer,	Hunter,	Shurtleff,
Boucher,	Johnson,	Steele,
Brown,	Kelley,	Stevenson,
Caples,	Lampson,	Thompson,
Estey,	Lewis,	Tinnin,
Garvey,	Mansfield,	Townsend,
Heiskell,	McComas,	Tuttle,
Hitchcock,	McConnell,	Van Voorhies,
Howard, of Los Angeles,	Moreland,	Wilson, of Tehama—35.
Howard, of Mariposa,	Nason,	

PAIRED—Mr. Davis, aye, with Mr. Holmes, no.

THE PRESIDENT. The Secretary will read the amendment to section eleven, reported by the Committee of the Whole.

TAXES AND INSTALLMENTS.

THE SECRETARY read:

"SEC. 11. The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments."

MR. AYERS. I move to strike out "have the power to."

MR. WYATT. Mr. President: The amendment proposed is simply the addition that is made to section eleven.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: There is perhaps no necessity of going into the merits of this section. It was fully discussed at the time, but by, I think the inadvertence of Mr. Winans, of San Francisco, the words "have the power to" was placed in that section, and the amendment vitiates the whole section. It is the sense of this Convention, as I understood the debate, to authorize in a mandatory form the Legislature to frame a law by which taxes shall be collected in installments, in terms of one, three, or six months, instead of as at present. By inserting the words, "have the power to," we have opened the door here which will prevent the passage of such a law. It is well known that in nearly all of the counties of this State, outside of San Francisco, perhaps the public funds are deposited in private banks, and there is not a county in this State, as far as I know, that receives any advantage from these banks, but the people's money is used by private institutions for usurious purposes. This is the case in nearly every county in the State. The people go to the bank where the public funds are deposited, and they borrow their own money at a usurious rate of interest. Now, there is a great deal of money in these private institutions, and they cling to it with great tenacity, and if we do not make this provision in this section mandatory upon the Legislature, they will bring influence enough into this hall every time that such a measure is proposed to defeat it. I do not propose myself to leave this open to any such interference with legislation. I hope the Convention will see the propriety of striking out these words and making the section mandatory upon the Legislature.

MR. LARKIN. If the Convention refuses to concur in the amendment of the Committee of the Whole that accomplishes the result you desire.

MR. AYERS. I move then to now concur in the amendment of the Committee of the Whole.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: The revenue laws of this State, or, in fact, of any government, are the most intricate subjects that we have to deal with, and when we begin to tamper with them we are liable to inextricable confusion. I think the proposition that is advanced here will lead to that result. It is vicious, and would so complicate the revenue laws of this State, that there will never be any system in the collection of taxes. Now, the gentleman in his argument has taken the position that the money of the people is used for private purposes. Now, would his proposition improve that thing. The gentleman knows that the taxes of this State are paid at the last moment that they are due. They are generally paid the last week in December. Now, if this system is adopted it will require more frequent settlements with the treasury of the State; it will cost that much more money. It would result in confusion, and would be of no benefit to the communities, or to the people of the State. The whole subject should be stricken out and left as it is at present.

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REMARKS OF MR. LARUE.

MR. LARUE. Mr. President: I hope that the original section, as reported by the committee, will be adopted. I am surprised at the stand Mr. Tinnin takes. I know that it would be a great benefit to the people of the State to pay in installments. There is paid now into the State treasury about three millions of dollars. That must lie in the State treasury to be paid out by monthly installments during the coming year. We have in the county treasury about five million dollars; that is there locked up, or deposited in banks, to be loaned out to the people. Under the present system we take twelve million dollars out of circulation at one time. If the taxes were paid in quarterly, nine million dollars of that would be left in circulation, and the money market would not be so stringent.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I hope the Convention will not concur in the recommendation of the Committee of the Whole. It would simply leave the matter as it now is, optional with the Legislature. I believe the old Constitution had no provision declaring that the Legislature should fix it this way or that way. But the eleventh section, as made by the committee, provides that the Legislature shall provide for a system of payment by installments of the taxes on real property. It would retain in circulation at least a million of dollars that is now locked up. The average, perhaps, would be about one million dollars all the time. I would say, that in the State of Pennsylvania this system has been at work and worked well. I believe that the Western States will adopt the system of payment by installments, and I hope that the Convention will not concur in the amendment of the Committee of the Whole, and that we will adopt the original section.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: I hope that this experiment will not be forced upon the people of this State. It may be very well to pass the section as the Committee of the Whole has it, as it is a matter for legislative action, but not compel them to adopt it. I believe the whole system is wrong. I believe that it would keep the tax collector perpetually in the field. I believe it would require a second publication of the delinquent list. There will be an increased number of settlements, and consequently, an increased expense. It separates the collection of the real from the personal property tax, and I believe it would throw the whole matter into inextricable confusion.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I hope the Convention will refuse to concur in the amendment of the Committee of the Whole. In regard to the inconvenience of paying on a very small amount, there is no such thing in it, because it refers only to the tax upon real property. It is true that it makes a distinction between the tax upon personal or real property, but that is done by the statutes to-day. The statute provides that the taxes upon personal property are due at the time of assessment, and for the simple reason that we have a very large amount of property that is floating here, there, and everywhere, and the Legislature have thought it necessary to make this distinction. Not so with realty. It is a fixture and it cannot escape taxation. Hence, it is provided that the taxes upon realty shall be due at a given time, which is subsequent to the time of assessment about six or eight months. A moment's reflection will show every gentleman the necessity for that discrimination as against personal property where no realty is assessed with it.

Now, in regard to the objection made by the gentleman from Sacramento, Mr. Freeman, I really am unable to see anything in it. He says there will be inextricable confusion. Now, I take it, that under this provision the Legislature would provide for two installments, and the only difference would be, that the County Treasurers would have to make settlement once in six months, instead of once in twelve months. There may be some little inconvenience and some little additional cost in the aggregate to the county treasuries, and possibly to the State treasury, but certainly it would be very small, very trifling. It seems to me that when we come to weigh its disadvantages against the great disadvantage of locking up in the safes of the county treasuries of the State twelve or fifteen millions at one particular time, there is no comparison. It creates a stringency of the money market that is felt by every man, woman, and child in the State to a greater or less extent. The mere loss of the interest is, perhaps, the smallest item of disadvantage. The great item is in creating an arbitrary stringency of the money market. While it may not distress the money lender and the rich man, yet it does distress those who are in stringent circumstances. When a great evil like this can be remedied so easily, I cannot see why we should not apply that remedy now and here.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: Gentlemen who are arguing in favor of this proposition seem to lose sight entirely of the practical working of the tax system. This is an experiment, and there are some gentlemen who wish to experiment upon everything in this Constitution. To my mind, it is the most ridiculous proposition in the world. Can't you now pay your taxes from the first of March until the next January? You can pay them any time during ten months in the year.

MR. BIGGS. You say you could pay during ten months in a year?

MR. LARKIN. Yes, sir.

MR. BIGGS. No, sir.

MR. LARKIN. The Treasurer will take your money. You can pass a law that will allow you to do it if you want to. But there should be a final settlement at the end of the year, and not have taxes run along from year to year. The whole effect of this would simply be to give a system of credits. You propose to run them over from year to year without any settlement. The taxes will always be in confusion. There is no necessity of any provision of this kind in this Constitution. The Legislature has the power to determine when taxes shall be paid, and they have the power to provide that they may be paid in installments. I am in favor of settling every year, and having every officer settle up before he quits the office. This system will create confusion, and I look upon it as the worst proposition in connection with the revenue that has ever been offered in this State.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I agree with the gentleman from El Dorado in thinking that this is an experiment which we ought not to try in the Constitution. I do not say but what it would be advisable to make provision for paying taxes by installments. If it can be made to operate it would be advisable, I admit, but the Legislature already has ample power to try that experiment without passing this section, or by passing it as recommended by the Committee of the Whole. That says that the Legislature shall have power. Well, they have power without that. But if this Convention does any thing in the matter, I hope it will concur in the action of the Committee of the Whole, because that leaves it right where it is now. Now I will tell you why I am opposed to putting so much in a Constitution that is mandatory. If under any circumstances the letter of the Constitution is not strictly complied with, the tax cannot be enforced. Now, as the section stood, as recommended by the Committee on Taxation, it is mandatory, saying that the Legislature shall provide for the payment of taxes by installments. Now suppose, that notwithstanding that the Legislature should not make that provision, I take it upon myself to say that if the Legislature through neglect, or purposely, or for any other reason, should neglect to make that provision that taxes should be paid by installments, that not one cent of taxes on real property could be collected. Gentlemen may say, that if we make it their duty and say that they shall provide, that the Legislature will do it. That does not necessarily follow. How many provisions are there in the present Constitution which are mandatory, and still the Legislature has not complied with them; not many perhaps, but there are some. For instance, our present Constitution requires that the Legislature shall provide for a system of township governments. Everybody knows that the Legislature never has complied with that provision of the Constitution. In that case no great evil has resulted, because the constitutional provision is nugatory without legislative enactment. We had to get along with county governments instead of township governments; but suppose the Legislature fails to provide for the payment of taxes by installments, then this becomes nugatory. The result will be that the tax would not be levied in accordance with the Constitution, and could not be collected. Everybody knows that if the Constitution requires that such and such a thing shall be done, if it is not done the taxpayer is not bound to pay the tax. I shall vote to stand by the report of the Committee of the Whole, because that leaves it just where it is now, and the Legislature will have the power to do it.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I do not think that much argument is necessary to expose the fallacy contained in this section, and I rise, not for the purpose of discussing it particularly, but merely to make one point. Before I make that point, I desire to say that I have no particular objection to the passage of the section, as amended by the Committee of the Whole, but I do not see that even that is necessary. I look upon the State Constitution as being a mere limitation upon the power of the Legislature. If there is no limitation upon that power, the Legislature has a right to pass any law upon this subject that they may see fit. But I am directly opposed to trying the experiment in the Constitution, or rather, making it mandatory upon the Legislature to pass such a provision. Now, I am satisfied that hardly any of the taxpayers of the State, because most of them are small taxpayers, would be willing to pay their taxes in that way. If there were no penalty attached, they would let the first installment go unpaid; then you would have to provide for the enforcement of the collection of the tax. Now, if you provide for the enforcement of the collection of the tax by selling the property, if the taxes are left unpaid, how are you going to collect the second installment after you have already sold the land for the first installment?

MR. AYERS. Would not a motive be found in placing an interest upon the tax, after it had run over? This is the way it is done in Europe. There is an inducement to the taxpayer to pay his tax when the installment is due.

MR. SCHELL. That would be an inducement for men who had the money ready to pay it, but I undertake to say that not many of them would be likely to pay it. Many of them would have to go and borrow the money and pay interest on it. I know now, that many men allow their taxes to become delinquent in order to use the money longer. I cannot see even where it would benefit the large taxpayers, because the money is as good to them in their hands as in the treasury of the State.

MR. LARUE. Would it not be a great advantage to the people of the State to have this money in circulation, instead of its being locked up in the treasury?

MR. SCHELL. I do not see how it could be. If you pay by installments, you will pay every six months.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I shall vote in favor of the amendment to the section because, of course, I do not want the original section to stand. It seems to me that this is a matter of detail, and we ought not to meddle with it at all. The subject of the collection of taxes is a matter of bookkeeping, with all manner of details, which we cannot regulate in this Constitution. It is a mistake to make it imperative upon the Legislature to collect the taxes by installments. It would confuse the whole business, and there would be no remedy at all in case it was found not to work well. It seems to me, sir, that in the mere matter of

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keeping the books, alone, a very serious objection would rise in regard to this attempt to regulate this collection of taxes in this way. It would increase the expense of collection about fifty per cent. in my opinion, and it is a discrimination that would be unjust. Now, the only argument in favor of having any provision upon the subject would be this: Without any expression in the Constitution that the Legislature might do this, the objection would be made that it was a discrimination in favor of one class of taxpayers, giving them time, while another class was denied the privilege; but if the Constitution authorized it I suppose objection could not be well made against the tax. Therefore I am going to vote in favor of the amendment.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I had no idea that this would cause any discussion, when gentlemen know that there are from fifteen to twenty millions of dollars locked up in this State. I undertake to say that half of the taxpayers are paying interest on that money to-day. Well, sir, this is the way—one gentleman told me that he had inquired into one small bank, and he knew of one little bank that had loaned out over sixty thousand dollars to people to pay taxes with. My county to-day has borrowed over one hundred thousand dollars to pay the taxes this year. Is it right that this money should be locked up in the State and county treasuries, doing nobody any good, when the taxpayers are borrowing this money and paying a big rate of interest? There are millions of dollars in the State Treasury that will lay there until the first of next January. It is no experiment at all, and the Legislature has never given any relief to the taxpayers.

MR. LARKIN. It would not require any settlement, or else you would have to publish the delinquent list each time an installment was due.

MR. BIGGS. No, sir. Make the delinquent list the last time. I know this will work well. It is simple.

MR. SCHELL. Would it not increase the cost of collecting the revenue of the State?

MR. BIGGS. Not one single mill. We have salaried officers, and they will make the assessment and collection just the same as now. It is not a fact that it will cost more.

MR. TINNIN. Are not the Treasurers paid for each settlement they make with the State Treasury?

MR. BIGGS. We will only let them be paid for one, and keep this money in circulation. Do not rob the taxpayers of this State. They are taxed enough now. I would have the taxes become delinquent at the last installment.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: My first impression was that this would not be a good provision in the Constitution. Upon further consideration, however, and from the experience of the southern portion of this State, so far as I know, I have come to the conclusion that it would be a good and safe provision in the Constitution, making it mandatory upon the Legislature. Now, there are two great causes why taxation is a great burden. One is, that men have to pay all at the same time. Now, it is generally known that at the time taxes become due, there is a stringency in the money market. Every man has to come forward with his taxes at that time, or they become delinquent, and he has to pay more. It is harder for him to pay all the money at once. The last Legislature, or the Legislature before that, I forget which, extended the time of payment in some of the southern counties. If that had not been done it would have been a very heavy burden, and most disastrous to the southern portion of the State. The extension of the time two or three months made it so easy upon them that it is almost paid up. I do not see any difficulty in collecting the taxes by installments. The Legislature can provide just as well for two payments, or for three payments, as they can for one. It is not necessary to have separate assessments. Why not pay in as it is wanted? that would save the issuance of scrip at the same time. I shall vote against concurring in the amendment of the Committee of the Whole.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I hold a letter in my hand, written by a gentleman who once held the highest office in the gift of the people of this State, and whose official memory is sweet in the minds of the taxpayers of this State. He refers somewhat to this subject. He draws the harrowing picture of the condition of our people, just after the tax gatherer has gathered in the year's installment of taxes, and he compares it somewhat to the exactions of Germany upon France in its indemnity fund. He says: "Business is ruined and a real panic created. If there be any time yet to remedy the matter, see if you cannot have the taxes paid quarterly; monthly would be better." Then he goes on to picture the distress which has been caused by the late collection of large sums of money which are to be locked up in the treasuries for months and months, instead of being kept in circulation.

MR. WYATT. Mr. President: I believe that we have discussed this matter until most of the members have made up their minds, and I believe that further discussion would be a waste of time. I move the previous question.

Messrs. Huestis, Nason, Evey, and West, demanded the previous question, which was ordered by the Convention.

Upon concurring in the amendment of the committee, the ayes and noes were demanded by Messrs. Biggs, Ayers, West, Evey, and Nason.

The roll was called, and the amendment was concurred in by the following vote:

AYES.

Barbour,	Cross,	Farrell,
Bell,	Crouch,	Filcher,
Burt,	Davis,	Freeman,
Condon,	Doyle,	Garvey,
Gorman,	Mansfield,	Shurtleff,
Harrison,	McCallum,	Steele,
Heiskell,	McConnell,	Stevenson,
Herold,	McNutt,	Tinnin,
Hitchcock,	Moffat,	Townsend,
Howard, of Los Angeles,	Moreland,	Turner,
Howard, of Mariposa,	Nelson,	Tuttle,
Hunter,	Neunaber,	Van Voorhies,
Johnson,	Noel,	Wellin,
Jones,	Rhodes,	Wickes,
Kelley,	Ringgold,	White,
Larkin,	Rolfe,	Wyatt—50.
Lewis,	Schell,	

NOES.

Andrews,	Herrington,	Smith, of Santa Clara,
Ayers,	Huestis,	Smith, of 4th District,
Barton,	Hughey,	Smith, of San Francisco,
Biggs,	Kenny,	Soule,
Blackmer,	Keyes,	Stedman,
Boucher,	Lampson,	Stuart,
Caples,	Larue,	Swenson,
Chapman,	Lindow,	Swing,
Charles,	McComas,	Thompson,
Dowling,	McCoy,	Vacquerel,
Estey,	Nason,	Waters,
Evey,	Ohleyer,	West,
Freud,	O'Sullivan,	Wilson, of Tehama—41.
Grace,	Reynolds,	

MR. TINNIN. Mr. President: I desire to offer an amendment.

THE PRESIDENT. It is out of order. The next question before the Convention is on concurring in the action of the Committee of the Whole, in striking out section thirteen. The Secretary will read the section.

ASSESSORS AND COLLECTORS.

THE SECRETARY read:

"SEC. 13. Assessors and Collectors of State, county, city and county, town, or district taxes, shall be elected by the qualified electors of the county, city and county, town, or district in which the property taxed for State, county, city and county, town, or district purposes, is situated; provided, that vacancies may be filled by appointment, according to general laws."

The action of the Committee of the Whole was concurred in.

LIMITATION OF TAX.

THE PRESIDENT. The question is on concurring in the action of the Committee of the Whole, in striking out section fourteen. The Secretary will read the section.

THE SECRETARY read:

"SEC. 14. The State tax on property, exclusive of such tax as may be necessary to pay the existing State debt, shall not exceed forty cents on each one hundred dollars for any one year."

MR. BIGGS. Mr. President: We discussed that thing in the committee, and we believed there should be some limit, or else the State would be getting in debt, and the money would be injudiciously expended and squandered. I think it is well to reinsert that section. Now, gentlemen, there is no limit, and there ought to be some limit on the amount of tax.

MR. WYATT. Mr. President: I hope, also, that the section will be retained, and that the State annually, except for payment upon the public debt, will not be authorized to lay a greater per centum than forty per centum on the property for State purposes. It is amply sufficient to leave all necessary and reasonable stealings, in my judgment; and whatever is reasonable upon that subject ought to satisfy. I am, therefore, in hopes that section fourteen will be retained, and that the limitation of forty cents on the one hundred dollars will stand.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I hope that that section will be retained. It ought to be thirty cents. It will leave an ample revenue for the State under the present system of taxation. There is no way of making the State economical except you limit her power to collect taxes. It is all folly to say that we are obliged to run the State for less than it can be run. As long as there is money in the treasury it will be appropriated all the time and spent; as long as the treasury is full, men come to the Legislature with bills in their pockets to get through, and they argue that they need not tax the people any more, because there is plenty of money in the treasury. We have always had the treasury overflowing; unnecessarily so.

MR. SCHELL. Will the gentleman be kind enough to put it fifteen cents, instead of forty?

MR. WHITE. I would say thirty.

MR. BEERSTECHER. Have you ever computed how much forty cents on the hundred dollars would make?

MR. WHITE. I have spoken to those who understand State affairs, and they have told me that forty cents was plenty.

MR. AYERS. Would that be sufficient in case of war, or some extraordinary occasion.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I believe that when this matter was before the Committee of the Whole, it was then shown that a limit of forty per cent., as the State stands now, was really more than was necessary—much more than was necessary; but at the same time, Mr. President, I myself am not in favor of the section as reported. It may be entirely too much, it may be double as much, it may be three times more than is necessary, and it may perhaps be not enough. It

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seems to me that in either case it is unnecessary. It is useless, and we ought not to place a section of this character in here. We have no reliable data to go by, we have no correct figures to go by, and to go upon conjectures and upon surmises, and upon what somebody else thinks, I do not think it right.

MR. WHITE. I was told by the best authority that they had made examination, and they were perfectly satisfied that that was the outside limit that was necessary.

MR. BEERSTECHER. Mr. President: I am sorry to disagree with my friend from Santa Cruz, but at the same time what some one else thought is not evidence before this Convention. We have had too much of that character of statements here, and have been asked to go by them. The idea that Tom Jones said, that he thought Dick Brown told him, that he thought his friend said, that this might be enough. Now, if that is evidence for this Convention to go by, why then of course they must go by it, but it seems to me that it is wholly uncertain. This is either too much or too little. There is no evidence before this Convention to show that forty cents on the hundred is just the exact amount. For my part I do not see any reason for limiting it. The argument used by the gentleman from Santa Cruz is, that the treasury is so plethoric that men come here and urge appropriations on that ground. If that is the trouble, the proper course is to limit the appropriations, to prevent the Legislature from diverting the public moneys; and we have done that as much as possible. We have laid an embargo upon them. We have said: You shall not do this, and you shall not do that with the public funds—and that is the way to prevent misappropriations. I do not see any reason why we should adopt this clause here, that either amounts to nothing at all, or will be a positive injury.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I am in favor of concurring in the recommendation of the committee, and for this simple reason: It seems to me useless to put this iron-bound provision in when it does not provide for any emergency that may in the future arise. If it is adopted, it makes no difference what may come up in the State, what necessity may exist for the levying of a larger tax than is provided for here, it cannot be done. We are attempting to curb at the wrong end by doing this. We have already in our legislative article provided that they shall not do this, and they shall not do that, as has been stated by the gentleman from San Francisco, and that is a constitutional limit in the right direction; but having said that, it is folly to put this in here that will prevent any levy of a tax to a larger amount than this, no matter what emergency may arise. Consequently I hope that we shall concur in the recommendation of the committee to strike this out.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: This is one of those plausible propositions which generally come forward without much investigation as to the fact. The first question would naturally arise: What percentage is necessary to conduct a good government? This is the essential fact to be considered in this connection. At the present time the levy for State purposes is fifty-five cents on the one hundred dollars, of which forty-eight and nine tenths cents are for ordinary purposes, outside of the taxation necessary to pay on the State debt. Therefore, this limitation fixed in this section is eight and nine tenths less than the rate at the present time. That fact was stated when this question was before the Committee of the Whole, and perhaps had some influence with the Committee of the Whole in striking out the section. I have endeavored during my political life—I might say, so far as I have had occasion to vote at the polls, or elsewhere—to vote constantly and uniformly against all measures which looked like extravagance; but I never before knew that the manner of reducing expenses was to resolve that you would not pay if you did incur them. This is substantially as if the head of a family should say: "I will not incur any greater expense than one thousand dollars a year, and to be right sure about it, if I do, I won't pay it any how." The point is to not incur the expense. The gentleman stated here a few moments ago, as was said in Committee of the Whole, the point is not to make the appropriations. But if the appropriations are made, and they are legal, they must be paid this year, or if not, remain a debt to be paid at a future year; and under the eighth article of the Constitution of this State, the result would be in such cases that you incur a public debt, which must be submitted to a vote of the people, at great expense, in order to pay this indebtedness, which by your Constitution you say shall not be paid otherwise. Now, sir, that seems to me to be grossly inconsistent. It is striking at the wrong place. I am aware, sir, that some of my own constituents, for whose opinions I have very high respect, are in favor of this limitation, or of a limitation; not in favor of this, I presume, because when the current expenses of the State run to nearly nine cents on the hundred dollars over this constitutional limit proposed, I do not suppose any reasonable man would say that that ought to be the limit.

MR. AYERS. Does not that include the interest tax on the bonds? This is exclusive of that.

MR. MCCALLUM. Certainly it is. This is what I took into consideration. But taking that out, it leaves forty-eight and nine tenths cents still for the ordinary purposes of Government. I ascertained that from the State Controller's office on the former discussion of this question.

MR. BIGGS. Are you aware that the other States have adopted the limitation?

MR. MCCALLUM. I am aware that they have adopted this in some of the other States. I say that it is a popular idea upon its face. I say that this seemed to me to be plausible and reasonable. I most heartily concur and cooperate with all efforts here upon all these questions, tending to reduce the expenses so that forty cents on the one hundred dollars shall not be required. I do not believe that it ought to require over thirty cents. Great emergencies may arise, it is true, in which a larger sum might be required, and gentlemen who are talking about economizing in this matter by resolving that they won't pay if they do incur, it seems to me had better, instead of proposing new offices, and great numbers of them, say here, we will not incur these additional expenses. For instance, on the judicial article, not increase the expense of our judicial system fifty thousand or one hundred thousand dollars, unless it is absolutely necessary to do so. In another section, which we will reach in a few minutes, we require that there shall be two members of the Board of Equalization for every Congressional district of the State, when one half the number would be enough. We are making some new offices necessarily, but let us not make any more new offices than are necessary, and when we do make them, let us not incur any unnecessary expense in paying for such offices. Now, this is my general idea about this. I do not think it would be at all proper to fix such a limitation as this, which would undoubtedly have the effect which I spoke of in certain cases. It would run up a State debt which would have to be submitted to the people under the eighth article. It would be a system of going in debt. Instead of that there is a better system for States as well as individuals, and that is to pay as you go.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. President: This limitation upon the power to levy a rate is no new thing. It has been put in many of the more modern Constitutions. I hold in my hand the late Constitution of the State of Missouri. Section eight, of article ten, of that Constitution, says:

"The State tax on property, exclusive of the tax necessary to pay the bonded debt of the State, shall not exceed twenty cents on the one hundred dollars valuation; and whenever the taxable property of the State shall amount to nine hundred million dollars, the rate shall not exceed fifteen cents."

Now, sir, we fix the amount at double that which is fixed in the Constitution of Missouri, and we ought to be able to run this State on double the amount that they run the expenses of the State of Missouri upon. At forty cents on the one hundred dollars valuation, provided there are six hundred million taxable property in this State, it would raise the amount of two million four hundred thousand dollars; and provided there are eight hundred million dollars taxable property, it would raise three million two hundred thousand dollars. By the system of taxation we have devised, we hope to bring in between two and three million dollars of taxable property that has heretofore escaped taxation. Therefore, if this stands at forty cents, we would raise more than is now raised for the expenses of the State government. Now, sir, we have curtailed expenses considerable, or we propose to. In the first place, we propose to do away with judicial elections, which have heretofore cost about fifty thousand dollars at each election. We propose to hold elections every two years. Heretofore we have held three elections every four years. We propose to lessen the expenses of the Legislative Department of the Government to about one half, almost, of what it has been heretofore. We also propose to lessen the salaries of the State officers in this State, which will be quite a saving; and as the amount of taxable property is increasing in the State, and as we think we can bring into the assessment roll a great deal of property which has heretofore escaped taxation, I think that this sum of forty cents on the one hundred dollars valuation is amply sufficient to meet all the expenses of the State. I hope that we will not concur in the report of the Committee of the Whole, but that this section will stand as originally reported.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I hope the Convention will not concur in the recommendation of the Committee of the Whole. I believe in placing a limit such as is placed there as an admonition to the Legislature. I believe that the rule has been heretofore that the Legislature has encroached on the treasury to the full extent that it had power. We have been lavish in our expenditures. We have been lavish in our appropriations. I think it is well to stop the leak in both ways: to stop large appropriations, and then to limit the tax by a constitutional provision. I think it is a wholesome provision.

MR. ROLFE. What would you do in case of great emergencies, such as war, insurrection, rebellion, or some great public calamity?

MR. AYERS. I would vote to issue bonds. This is exclusive of debt.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I hope the Convention will not concur in the recommendation of the Committee of the Whole. Now, on general principles Legislatures and commonwealths are very much like men and boys. We spend money just in proportion as we have money to spend. If our pockets are full as we go out into the world, we spend money lavishly. If money is scarce we are more careful in regard to wasting and spending that money. Now we all know, at least every gentleman of this Convention who has had any experience in the Legislature, that there are a thousand and one claims that will come up for appropriation, and the plea will be: "Why, there is plenty of money in the treasury; the treasury is overflowing; we might just as well increase this appropriation for this, that and the other thing." When the Board of Equalization fixes the amount they fix it in proportion to the amount of expenditures made by the last general Assembly. They will spend it all, however much may be furnished. They will go to the extent of the amount in the treasury by their appropriations, leaving nothing to contingencies, and these contingencies are depending very much upon the amount in the treasury. Therefore, I do think that we should place this limit upon the amount of the assessment in this State. I hope that the recommendation of the Committee of the Whole will not be concurred in.

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REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. President: I hope that this Convention will concur in the recommendation of the Committee of the Whole in striking this out. I do not believe that there is any gentleman on this floor who can say how much it is going to cost to run the Government of this State; nor do I believe that this Convention should adopt an inflexible rule by which the Legislature would be tied up, for we do not know what circumstances may arise. Now, for one, I am in favor of running this State Government upon as economical a plan as possible, and I cannot see where this Convention has adopted any measures by which the expenses would be reduced; and it evidently has cost more to run the Government heretofore than we propose to admit. Then we are all well aware that there are many circumstances, perhaps, that no doubt will arise, wherein the State may be called upon to engage in a very laudable enterprise. There are millions of acres of land in this State that could be made productive, which is now lying idle and worthless, that would support millions of population and enhance the taxable property in this State millions and millions of dollars, which the State could make so by proper action.

MR. BIGGS. You propose to tax the State for private individuals?

MR. TOWNSEND. No, sir. But there are thousands and millions of acres of land in this State that are now desert lands, that the State could make productive at some future time, and add millions of dollars to the taxable property of the State. The time may come when the State may want to do that, and I do not propose to vote for an inflexible rule, saying that the State shall not levy more than a certain amount. I believe in leaving it in the proper place—in the Legislature.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: I hope this section will be stricken out. I am in favor of economy as much as anybody in this Convention, but the idea of such economy as this. I do not believe in it. I see an inclination on the part of this body to do away with the Legislature altogether. If we have lost confidence in the Legislature, which is the representative body of the people, then republican government is a failure, and you might as well throw up the sponge. I believe that the Legislature in the future will be just as honest as we are now, and, as to laying down an inflexible rule of this kind, we will be the laughing stock of the country. Now, Mr. President, if we go in for economy at all, let us put in ten or twelve cents and make a complete job of it. If forty cents on the one hundred dollars for one part of the State is sufficient to pay the taxes, it does not follow that it is sufficient in another part. The Government of France last year paid out the enormous sum of twice the national debt they incurred during the Franco-Prussian war, and still that country is prosperous. But here in California we are going to abolish our Legislature as it were, and tie it down so that it cannot move. Now, Mr. President, I believe that we have gone far enough in this kind of economy, and, for gracious sakes, let us keep within the bounds of reason and common sense. There is no sense in this provision. Look at it! Here is Sacramento City in danger any year of being swamped. The Sacramento River, if we have an extraordinary freshet will overflow its banks, and probably destroy the whole valley and Sacramento City; and we propose to bind down the Legislature so that it can render no assistance. Great emergencies of different kinds may arise, and the Legislature is bound hand and foot. I think the Legislature is bound well enough already, and we had better give it a little room to move around. I hope this section will be stricken out, and I will vote for striking it out.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: To adopt a section like this would seem to involve the idea that we believe that we possess the power to control the future; that we could see into the future and prevent any of these extraordinary emergencies which are likely, from day to day, to arise. I find that the expenses of the Government, at the present time, about four fifths of them, represent those permanent matters which we must provide for and take care of. In the schools, etc., and in the payment of the interest upon our indebtedness we consume four fifths of all the money, which is leaving only one fifth of what is now raised to carry on the ordinary expenses of Government, and yet it is proposed now to reduce, we will say from forty-eight to forty per cent., thus sweeping away nearly all of that one fifth which we now apply to ordinary expenses of Government. Besides that, who can say that our insane asylums may not be destroyed, and it be necessary to rebuild them; that our State Prison may not be destroyed and it be necessary to rebuild it; that there may not be a thousand things which will make it absolutely necessary that money should be raised?

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: I have come to the conclusion that we do not need this section, and I am in favor of having it stricken out entirely. If we put this limit on it now, when this State advances, and the assessable property becomes more valuable, the tendency will be to cut down the price of labor. In twenty years from now, thirty per cent. on the one hundred dollars would, perhaps, be fair enough revenue, but if we put in this inflexible rule, it will be impossible for the Legislature to extend it under any circumstances. The Legislature comes right fresh from the people every two years, and they know what the interests of the State are better than we can tell ahead for all time to come. We do not need to say anything about it in the Constitution, and I hope that this Convention will vote down this section.

Upon concurring, the ayes and noes were demanded by Messrs. White, Brown, Freud, West, and Biggs.

The roll was called, and the recommendation of the committee concurred in by the following vote:

AYES.

Andrews,	Harrison,	Ringgold,
Barry,	Heiskell,	Rolfe,
Beerstecher,	Herold,	Shurtleff,
Bell,	Huestis,	Smith, of 4th District,
Blackmer,	Jones,	Smith, of San Francisco,
Burt,	Keyes,	Soule,
Caples,	Larue,	Steele,
Condon,	Lewis,	Stevenson,
Cross,	McCallum,	Swing,
Crouch,	McCoy,	Tinnin,
Davis,	McNutt,	Townsend,
Dowling,	Nason,	Turner,
Farrell,	Noel,	Vacquerel,
Freeman,	Ohleyer,	Van Voorhies,
Garvey,	O'Sullivan,	Waters,
Grace,	Reynolds,	Wickes—50.
Hale,	Rhodes,	

NOES.

Barbour,	Howard, of Los Angeles,	Nelson,
Biggs,	Howard, of Mariposa,	Smith, of Santa Clara,
Boucher,	Hughey,	Stedman,
Brown,	Hunter,	Stuart,
Chapman,	Kelley,	Swenson,
Charles,	Kenny,	Thompson,
Doyle,	Larkin,	Tully,
Evey,	Lindow,	Tuttle,
Filcher,	Mansfield,	Wellin,
Freud,	McComas,	West,
Gorman,	McConnell,	White,
Herrington,	Moffat,	Wilson, of Tehama,
Hitchcock,	Moreland,	Wyatt—39.

PAIRED—Mr. Schell, aye, with Mr. Ayers, no.

BOARD OF EQUALIZATION.

THE PRESIDENT. The Secretary will read the amendment offered by the Committee of the Whole to section fifteen.

THE SECRETARY read:

"SEC. 15. A State Board of Equalization, consisting of two members from each Congressional district in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, and every four years thereafter, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of State taxation; provided, that the Legislature shall have power to reduce the number to one from each Congressional district, when said districts shall have been increased in number. The Controller of State shall be ex officio a member of said Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of county taxation; provided, said State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe, as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll. The members of said Board, except the Controller of State, shall, at their first meeting after their election, so arrange, by lot, that one of their number from each Congressional district shall go out of office at the end of two years, and their successors shall be elected at the next general election thereafter to be holden by the qualified electors of each of said districts."

MR. McCOMAS. Mr. President: I send up an amendment to section fifteen.

THE SECRETARY read:

"Amend section fifteen by striking out in lines four and five the words, 'and every four years thereafter,' and insert, 'whose term of office, after those first elected, shall be four years.'"

MR. McCOMAS. Mr. President: There is a clear conflict between the different portions of this section, and the reading of this provision as it stands makes the members of the State Board of Equalization to be elected upon the odd years, which is not the intention. This seems to me to be necessary to cover the whole ground.

THE CHAIR. The question is on the adoption of the amendment.

The amendment was adopted.

MR. WHITE. Mr. President: I move to amend by striking out the word "two," in the first line, and inserting the word "one."

MR. FREUD. I second the amendment.

MR. WHITE. Mr. President: I cannot understand the object of bringing eight men here to do what four men can do just as well, with the Controller. It is paying four additional officers in the State, and it makes just so much more expense. Four men coming from the different districts of the State, together with the Controller, are amply sufficient to do the work that we have allotted to them by that section, and I trust that increase of office-holding and officers will not be persisted in. The other four are entirely useless, in my opinion, and they cannot be paid less than a couple of thousand dollars a year, according to the ideas of gentlemen here; and I do hope that my amendment will be adopted.

MR. STEDMAN. Mr. President: I concur most heartily with the remarks of the gentleman from Santa Cruz, Mr. White, and I had a similar amendment prepared. I do not think his amendment is complete. If his amendment is adopted, it will be necessary to strike out

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the following words, beginning with the seventh line: "provided, that the Legislature shall have power to reduce the number to one from each Congressional district, when said districts shall have been increased in number." Also, strike out all after the word "roll," in the twentieth line.

MR. WHITE. I accept that amendment.

THE CHAIR. If there be no objection the gentleman from Santa Cruz will be allowed to accept the amendment. The Chair hears none.

MR. STEDMAN. Now, Mr. President, we have created a number of new offices, and I see no necessity, myself, for more than one member of this Board of Equalization from a district—four members from the four Congressional districts, and the Controller. In eighteen hundred and eighty-two we will have at least one more member of Congress, consequently we would have one more member of the Board of Equalization. I hope, sir, in the interest of reform, that this amendment of the gentleman's will be adopted.

MR. HEISKELL. Mr. President; I concur in the object of Mr. White's amendment, but it will be necessary also to strike the letter "s" from the word "members," in the first line. I would suggest that he accept that amendment.

MR. WHITE. I also accept that.

MR. HEISKELL. I also suggest that he strike out the word "of" in line six, and insert the word "in." It occurs to me that "the property of the several counties" simply means the property that is already exempt from taxation.

MR. WHITE. I accept that.

THE CHAIR. If the gentleman desires to withdraw his amendment for the purpose of revision it is all right, but he is tacking on too many amendments. It is impossible for the Secretary to keep track of them.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: When the matter of a State Board of Equalization was under consideration before the Committee of the Whole, the matter as regards the number of persons to compose that Board of Equalization, was thoroughly and exhaustively discussed. It was made apparent at that time to the members of the Committee of the Whole, that the interests of the several Congressional districts in this State, with the exception of the first Congressional district, composed of San Francisco alone, were so diversified and so different, and that the districts were so large, many of the counties forming the districts being as large as eastern States, that it would be better serving the ends of justice to have two members come from each Congressional district; that one man from a Congressional district would not serve the ends of justice as well as if we have two men from each Congressional district, and from different portions of the district. The size of the districts was under consideration at that time, and ought to be taken into consideration now. Districts which are five or six hundred miles in length, and two hundred miles in breadth—two men from such a district are not too much—and I hope that the Convention will adopt the report of the Committee of the Whole. I do not believe that it would be economy to strike out "two" and insert "one." I believe in economy just as much as the gentleman from Santa Cruz, just as much as any member upon this floor, but we may go too far in economy. We may go beyond the limit of economy; we may go to niggardliness. We may absolutely cut off what would carry out our intention and our purpose, which is the fair taxation of all real and personal property in this State. I hope that the section as reported by the Committee of the Whole will be adopted.

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I agree with the last speaker, the gentleman from San Francisco, Mr. Beerstecher. This section was well discussed in the Committee of the Whole. It was one of the most important sections in the whole report. It was stated, and well stated at the time, that our districts are composed of diversified interests. We have a great mining and a great agricultural interest. In some respects their interests are opposed to each other. This Board of Equalization should be composed of one miner and one agriculturist from one district. It is proper that we should have two to fairly represent both interests. I fully concur in all the remarks in favor of having two from each district. I think it is poor economy to strike out "two" and insert "one."

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: In the Committee of the Whole the proposition was presented that is now before the Convention, to strike out "two" and insert "one." It was in this condition then, not knowing what action would be taken afterwards; that if we made it one from each Congressional district there would be four, an even number. Afterwards, however, the Controller was added. So now, if we adopt this amendment, we will have one member of the State Board of Equalization from each Congressional district, which would be four, the Controller would be five, and there would be an odd number and no difficulty on that score. Now, sir, if there is one from each district, it is fair to assume that their compensation will not be fixed at less than three thousand dollars a year. That would be twelve thousand dollars for the four. If there was two from each district, there would then be twenty-four thousand dollars per year for the salaries of these officers; and, inasmuch as these are entirely new officers, all of them, we would, at one fell swoop, have saddled upon the State eight State officers, whose salaries would amount to twenty-four thousand dollars per annum at least; besides mileage, as the gentleman from El Dorado suggests. It would be adding fifty-six thousand dollars to the expenses of the State. A number of State officers have been added, and if the Constitution should be adopted, as I think and hope it may be, from present indications, we ought to remember that, while making some necessary increase, we ought not to unnecessarily increase these officers. This is just double the number that is necessary. Gentleman talk about these large districts. Why, if it is intended to proceed upon the idea that no man knows anything except what he can see around him in his own neighborhood, we had better elect a delegate from each county, and have fifty-two of them. Of course they would know better about the valuation of the property in their respective counties, so far as personal observation is concerned. All theories of State officers proceed upon the idea that they get their information from the various sources which now are almost unlimited; not necessarily from personal observation, but from general observation of the country, the whole country. As to such knowledge, the man who has made it a business, as some have, has a better judgment about those values than those persons who live in the immediate locality. It is their business to inform themselves; it is their duty to do so; and one member from each district would be enough to acquire this information. Now, sir, I hope the amendment of the gentleman from Santa Cruz will prevail; but I believe he accepted an amendment at the close of the section which I would suggest had better be left off, as we are to be compelled to vote for a number of propositions, and we might agree to some of them and not to all. I understand that the gentleman has accepted an amendment to strike out the last clause, commencing after the word "roll," in line twenty. Will the Secretary read the amendment as it now stands?

THE SECRETARY read:

"Strike out, in the first line, the words 'two members,' and insert 'one member;' also, strike out the following: 'Provided, that the Legislature shall have power to reduce the number to one from each Congressional district, when said districts shall have been increased in number.' Also, strike out all after the word 'roll,' in the twentieth line."

MR. MCCALLUM. The gentleman mixes that last proposition up with it. If the gentleman will consent to strike that out——

MR. WHITE. Leave that clause out.

THE CHAIR. If there be no objection.

MR. STEDMAN. I object.

MR. MCCALLUM. In that case, can't we have a division of the question?

THE CHAIR. There can be no division of one single amendment.

MR. MCCALLUM. Then, in case of a desire to have a portion of it adopted and not the rest, are we not entitled to a vote on that proposition? It is a question as to who shall have their way about this thing.

THE CHAIR. The Chair will state that the gentleman from Santa Cruz, after offering his amendment, accepted certain other amendments, and no objections were made, and the amendment now stands as though the gentleman from Santa Cruz, Mr. White, had originally offered one complete amendment. There is objection now to a part of this amendment being withdrawn, and the Chair rules, that there being an objection, the amendment must stand or fall all together.

MR. MCCALLUM. I offer an amendment to the amendment.

THE CHAIR. The Chair will state that there are now pending two amendments, and a third amendment cannot be allowed.

MR. MCCALLUM. I have heard that stated in general terms, and I would like to know from the Chair what is to be understood by that. I have always understood that amendments may be amended. Now, if it is meant by the Chair, that when an amendment is offered that no amendment can be offered to that amendment, why, it is to overrule the whole principle of parliamentary law. I admit that I cannot offer another amendment, but I offer an amendment to the amendment.

THE CHAIR. I will state the understanding of the Chair upon it, and I shall try as nearly as possible to conform to the ruling of the President. The original section fifteen of the article on revenue and taxation is the proposition to which an amendment—simply an amendment—is recommended by the Committee of the Whole, to which amendment the gentleman from Santa Cruz has offered an amendment, which stands as an amendment to the amendment. Now, then, to entertain a third amendment during the pendency of these two amendments would be to entertain an amendment to an amendment to an amendment, which is further than any parliamentary law is ever allowed to go.

MR. MCCALLUM. Then the proposition of the Committee of the Whole is in itself an amendment.

THE CHAIR. Yes; it is the first amendment.

MR. MCCALLUM. I only wanted to get the ruling of the Chair, because when the first one came up the gentleman who occupied the chair ruled that the report of the committee was the proposition to be voted on. Judge Belcher, the President pro tem., as soon as he got a chance, overruled the decision of the other delegate, and said that the Convention had nothing whatever to do with that. The simple question before the Convention was, what the Committee of the Whole proposed. The President has ruled the same as the present occupant of the chair. I do not know that there is anything so objectionable in that part of the amendment but that I can vote for it in order to secure the other part. I have only to say that my judgment about this matter of economy is to reach it right in this place, and stop all unnecessary expense.

MR. STEDMAN. I desire to ask the gentleman if he is in favor of one or two members from each district?

MR. MCCALLUM. Only one.

MR. STEDMAN. Then I withdraw the objection.

MR. BLACKMER. I renew the objection.

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from Santa Cruz, Mr. White. Those in favor of——

MR. BIGGS. Mr. President: I wish to say——

MR. CROSS. I object, sir, to this way of doing business. One side of this house has had the entire discussion. We gentlemen have waited for a chance and the Chair, looking directly at us, refuses to recognize us and calls for a vote. I object to this way of doing business. I enter

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my protest here against this way of doing business. We are here in a deliberative body——

THE CHAIR. If the gentleman will suspend one moment, I wish to state that after the question had been announced the Chair heard the gentleman from Butte, Mr. Biggs, address the Chair. The Chair at once recognized Mr. Biggs. Now if there is anything wrong about recognizing Mr. Biggs, I fail to see it. The gentleman from Butte, Mr. Biggs, has the floor.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I am glad to see the gentleman take an interest in this matter. This proposition was formulated in committee with much care. We discussed it in Committee of the Whole at great length, and agreed to adopt that recommendation. I would just state that it is a matter that I take no particular interest in. The only reason why we recommended two from each Congressional district was this simple fact that has been stated by the gentleman from Sonoma, Mr. Stuart. It is well known that the interests of every district, except the first, are very much diversified. Very few agriculturists know the value of the mines or the mining interest, and the miner knows but little of the value of agricultural land. We believed it better to have two from each district. Judge Belcher spent months in preparing this section, and this thing was discussed, pro and con, in the Committee of the Whole. I do not propose to take up the time of the Convention now, only to state why it was adopted in Committee of the Whole. San Francisco is a district where the interests are alike, and any one who knows the value of real estate there, can represent them, but we don't consider it proper or right to discriminate, therefore we believe that it would be to the interest of the State to have two from each Congressional district, one from the mining portion and one from the agricultural portion. I am here to represent the people of this State for their best interests. I do not think it is wise to be penny wise and pound foolish, and if we can receive more revenue by having two from each Congressional district, I think it is right. It has been recommended and adopted by the Committee of the Whole.

MR. TOWNSEND. Are you going for more revenue?

MR. BIGGS. Because it will be better equalized. Does the gentleman suppose that a farmer knows what the mines are worth, or that a miner knows what the agricultural land is worth?

MR. TOWNSEND. Do you propose to say, in this law, that there shall be one from the agricultural and one from the mining districts?

MR. BIGGS. Yes. I think there should be one from each, and I want to reach all these large land monopolies. I want to see the land taxed at its full valuation, and that is the only way to reach it, by having a competent Board of Equalization. Tax it at its full value, large estates as well as small.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., Mr. Waters in the chair.

Roll called and quorum present.

IN RELATION TO UNIVERSITY LANDS.

MR. REYNOLDS. Mr. President: I ask unanimous leave to offer a resolution, that it may be laid upon the table and printed, to be made the special order for to-morrow morning.

THE CHAIR. If there is no objection the Secretary will read the resolution.

THE SECRETARY read:

MEMORIAL TO CONGRESS IN RELATION TO UNIVERSITY LANDS.

WHEREAS, A certain bill is now pending before Congress, purporting to grant forty-five thousand acres of land to the University of California, in excess of the one hundred and fifty thousand acres granted to endow a College of Agriculture; and, whereas, the Regents, members of this Convention, assert that the Regents have asked for the passage of no such bill, and that it is neither directly nor indirectly in the interest of the University: and, whereas, grants of land, made in the manner proposed by said bill, only afford land monopolists opportunities to rob the public domain of lands which ought to be granted only to actual settlers, and in limited quantities; therefore,

Resolved, By this Constitutional Convention of the State of California, now in session, that Congress be, and is hereby respectfully, but earnestly, memorialized to refuse to pass said bill, to the end that whatever remains of the public domain may be retained for the use of those who will settle upon and improve it.

Resolved, That these resolutions be printed, and a copy, signed by the President and Secretary, be sent without delay to each of our Senators and Representatives in Congress.

MR. STUART. I object to that.

MR. REYNOLDS. Mr. President: I will merely remark that in offering these resolutions now, I do so that they may be printed in the Journal to-morrow morning, that the members may see them and have an opportunity to ascertain exactly what they are. I do not notice any of the Regents here, and I do not wish to call the resolution up until they are here.

MR. STUART. I object to the resolutions because they are not germane to the question we are discussing, and because they are not connected with the Constitution. I move to lay the resolutions on the table.

MR. REYNOLDS. I had not yielded the floor for any motion. I move that the rules be suspended, and that the resolutions be made the special order for Wednesday.

THE CHAIR. The two motions cannot go together. The question is on suspending the rules to allow the gentleman to introduce the resolutions.

The vote was taken, but there being no quorum voting, the question was stated again.

MR. DOWLING. I cannot see how there can be any objections, because two of the Board of Regents have testified to a knowledge of these frauds.

THE CHAIR. The question is upon suspending the rules.

Upon the question of suspending the rules, the ayes and noes were demanded by Messrs. Stedman, Wyatt, Vacquerel, Stuart, and Blackmer.

The roll was called, and the rules were suspended by the following vote:

AYES.

Andrews,	Hale,	Nason,
Ayers,	Harrison,	Neunaber,
Barbour,	Harvey,	O'Sullivan,
Barry,	Heiskell,	Reynolds,
Barton,	Herold,	Rhodes,
Bell,	Herrington,	Shurtleff,
Biggs,	Hitchcock,	Smith, of 4th District,
Blackmer,	Howard, of Los Angeles,	Smith, of San Francisco,
Boggs,	Howard, of Mariposa,	Soule,
Boucher,	Huestis,	Stedman,
Brown,	Hughey,	Steele,
Chapman,	Hunter,	Stevenson,
Charles,	Johnson,	Swing,
Condon,	Kelley,	Tinnin,
Cross,	Kenny,	Townsend,
Davis,	Keyes,	Turner,
Dowling,	Kleine,	Tuttle,
Doyle,	Lampson,	Vacquerel,
Dudley, of Solano,	Larkin,	Walker, of Tuolumne,
Dunlap,	Lewis,	Waters,
Evey,	Lindow,	Wellin,
Filcher,	McComas,	West,
Freud,	McCoy,	Wickes,
Garvey,	Moffat,	White,
Gorman,	Moreland,	Wyatt—75.

NOES.

Burt,	McConnell,	Stuart,
Caples,	McNutt,	Swenson,
Crouch,	Ohleyer,	Thompson,
Larue,	Rolfe,	Tully,
Mansfield,	Shoemaker,	Van Voorhies—16.
McCallum,		

MR. REYNOLDS. I now offer the resolutions, and move to make them the special order for Wednesday, at two o'clock.

Carried.

NOTICE OF RECONSIDERATION.

MR. VACQUEREL. I give notice that on Tuesday, February eleventh, I will move to reconsider the vote by which the Convention concurred in the action of the Committee of the Whole, by striking out section nine of the report of the Committee on Revenue and Taxation.

REPORT.

MR. AYERS. Mr. President: I ask leave to make a report from the Committee on Reporting and Printing.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Reporting and Printing report amendment number four hundred and eighty-five—Militia; amendment number four hundred and fifty-four—Chinese; and amendment number four hundred and forty-four—Corporations other than Municipal, as being correctly engrossed.

MR. LARUE. Mr. President: I gave notice on Friday that I would move to amend Rule Thirty-five. I would like to know the condition of it, whether it can be acted on or not. I made a motion to take it up, but a motion to adjourn cut it off.

THE CHAIR. It must have gone into unfinished business.

MR. LARUE. I move that it be taken up.

THE CHAIR. It will require a suspension of the rules.

MR. LARUE. I move that it be passed until to-morrow morning.

MR. LARKIN. I think the motion is out of order.

THE CHAIR. The Chair will so decide.

STATE BOARD OF EQUALIZATION.

THE PRESIDENT. The question before the Convention is the amendment to the amendment to section fifteen, which was offered by the gentleman from Santa Cruz, Mr. White.

SPEECH OF MR. BARRY.

MR. BARRY. Mr. President: I hope that this amendment will not prevail for the reason that I believe it will have this effect—that the centers of population will alone be represented on the State Board while the interior portions of the State will be unrepresented. Men will be very likely to be selected upon the State Board who are not familiar with the interests and wants of the interior counties. They will know nothing whatever about the value of the mining property of my district. I would like to know what a farmer or business man here can know about the mining interest, or the relative value of the mining Counties of Siskiyou, Sierra, and Nevada, all of which are in the third district, which extends from one portion of the State to the other. If only one man is elected from each district, I hold, sir, that these interests will be unrepresented. For instance, in the third district, comprising such agricultural Counties as Humboldt, Marin, and Sonoma, the representative would be likely to be a farmer, in order to represent the farming interest, and the mining interest would be unrepresented. I hold that they would be apt to disregard the interest of the mining districts in that respect. If we have only one, there is no doubt but he will be selected from the populous centers, and the outside interests will go unrepresented.

Now, sir, on the part of the mining districts, I protest against any such action as this; and I say that the action of the Committee of the

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Whole in providing for two members from each district was just and right; that in that case, the interests of each district in the State were fully considered, and not only will the districts be fully represented, but the interests of the whole people of the State will be represented. And I believe it is the duty of true statesmen, in a republican form of Government, to see that the interests of the entire people should be represented, and not the interests of a special or exclusive class. As I said, if you say that one man shall be elected from each district, it will not be a representative Board in any sense of the word, for the State Convention will select men from the populous centers. Now, I say, that is wrong. It is unjust to the interests of these communities. As one representing a mining constituency, I protest against it. I believe, sir, that when the miners come to read the Constitution, if we adopt this amendment—and they will certainly read it—they will not vote for it. They will not vote upon it by what any newspaper may say, or by what any man may say, but by what they read themselves. They will look over your entire work; and if it does not meet their approval, as I am satisfied it will not, I think, sir, that they will certainly vote against it. I do not offer this in any manner to bulldose the Convention, or the gentleman from Sacramento, who is now upon the floor to ask me a question; but I do say, sir, that it is right that two men shall be selected from each district, so that when the nominating conventions come to meet they will select one man to represent the farming interests, and another from a different portion of the district to represent the mining interests. Each will select a representative of his class. Of course, in doing this, the interests of the whole people will be subserved. Mining and farming are two of the most important interests in this State, and I say that the agricultural interest should be considered as well as the mining interest. The people will see that men representing these two great interests are selected, in order to carry out the will of the people, and what the people believe to be right.

In regard to the question of expense that some gentlemen have spoken about, there is nothing in it. I, myself, am in favor of economy. I believe the government of the State should be conducted upon an economical basis, in the interest of good government. But I do not think, sir, that this amendment if adopted will be against economy, but it will be in the interest of economy and good government. If these men are elected, their salaries will most likely not be three thousand dollars a year; but the Legislature will be very likely to provide that they shall simply get a per diem for the time they are at work. They are not likely to get more than eight hundred dollars, or one thousand dollars for each year for the duties they will be called upon to perform. They will not receive a set salary, but they will be paid for the time which they actually work in performing the duties of the office, and that will require but a few weeks, or months during each year. I hold that the good these men will be able to do, in regard to a fair and just revenue, will more than repay the outlay, if you give us a Board of Equalization composed of eight members. I hold further (and I see that Dr. Caples is on his feet) that if two men are selected from each district, that it will be a more representative Board, that they are not so likely to be governed by improper motives, such as might be used by a less number. For these reasons, and for other reasons which I might mention, but which time will not permit, I hope that the section formulated by the Standing Committee, and agreed to by them, will be adopted, and that we will not again stultify ourselves by rejecting it.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. The question before the Convention, as I understand it, is on the amendment of the gentleman from Santa Cruz, to strike out two members and insert one member from each district. Is that the question?

THE PRESIDENT. The question before the Convention is the adoption of the amendment offered by the gentleman from Santa Cruz, Mr. White.

MR. BARBOUR. Mr. President: I believe, sir, that in the Committee of the Whole, I offered this same amendment. It was discussed there, and voted down. My reasons at the time were, that it was a proper act in the interest of economy; that was the principal consideration with me during the time, but since then, the more I reflect upon it the more I am satisfied that we should not have a bulky or cumbersome Board, and that three men will be more apt to make a correct and proper equalization of the property of the State, than eight or twenty men. The more you increase the number the greater will be the conflict of opinion. Gentlemen are arguing here as if these members of the State Board were to act from their own personal knowledge concerning assessments; that they are to review and reform the assessments of the counties from their own personal knowledge of the value of the property assessed. Well, sir, if that argument is good for anything, it would be that they should have some superior knowledge to the Assessors and Boards of Equalization; in other words, some knowledge which would enable them instantly to detect errors, because it is scarcely to be presumed that they can descend down into a minute examination of the entire assessments throughout the counties. You say we want two men from each district, so as to represent the two great interests of farming and mining. It does not follow, by any means that the conventions will make their selections with a view to that, but implies that there are only two interests to be looked after. Now, you have the agricultural interest in this State, and the mining interest, and you have the commercial interest, and who can say that any one of these is of more importance than the other? If you are going to represent them, why not say that there shall be a delegate for each; why not say so in so many words? I say the arguments of the gentleman proves too much. If it is a good argument that these two interests should be represented, it is good logic that other interests should be represented.

Now, sir, we have provided for a Board of five, which is capable of expansion, of course, according to the expansion of the State. It will increase in time to six or seven men. Now, sir, if I understand the purposes and objects of a State Board of Equalization, you are apt to get just as good services in a Board of five as in a Board of ten members. I know not the cost of this thing, but it will amount to considerable—perhaps ten thousand or twelve thousand dollars annually. I am unable to perceive where there will be any more good accomplished by doubling this sum. In these bodies, whose duties are such as the Board of Equalization, the more you increase them, the greater will be the confusion. We have found an illustration of that fact right here in this Convention. You have the same thing wherever you increase the number. I maintain that the knowledge which is necessary to perform the duties of a Board of Supervisors is sufficient for a State Board of Equalization, and I say that five men are better than ten or twenty men. In multiplicity of counsel there is confusion.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. President: I hope to say a word, now that everybody else has got through. The gentleman from Sierra, Mr. Barry, notwithstanding his long winded speech, didn't hurt anything very bad. His argument proves too much, or it proves nothing. I would like to know if he has any reason for saying that the mining interest will be ignored. He assumes that if we have only one member from each district the mining interest will be entirely ignored, and not represented at all on the State Board. Now, I can conceive of no data upon which he predicates such a conclusion. Now, I desire that the best men shall be elected to office. If the agricultural counties can furnish the best men, let them be elected; but I protest against the wanton assumption that these counties will necessarily do that. The mining counties have produced some good material, and they are just as likely to secure the offices as are the agricultural counties. His remarks prove too much, or nothing. He assumes that certain interests must be neglected, or will not be fairly represented. This is not sufficient reason, for, as Mr. Barbour says, there are agricultural, commercial, mining, and various other interests, and if the argument of the gentleman is good for anything it amounts to this, that every single interest in the State should be represented on that Board. Again he has attempted to show that no one single citizen of the district could fairly represent all the interests of so much territory. If we agree to that proposition what do we arrive at? We arrive at the conclusion that we must have a very large Board. Eight is not enough; we must have one from each county in order to represent the territory. Two from each district will not be sufficient. Now, I protest against this kind of argument. Even if there was anything in it, there is too much against it. It is not practicable. Each Commissioner will cost the State of California not less than five thousand dollars per annum—three thousand dollars for salaries, and two thousand dollars for traveling expenses. It is proposed to have four men. I assume that there will be one from each district, besides the Controller, who will make five. I assume that five will be better than fifty. Besides, it is impracticable. It would entail a very heavy expense upon the State to have so numerous a Board. I desire to remind the gentleman of the absolute necessity of considering economy while we are creating new offices. Let us create no more than are absolutely necessary to carry out the reforms that are demanded. In this case I submit to the common sense of every gentleman that a Board of five men are as competent as a Board of one hundred men, and it will cost the State twenty thousand dollars more under the plan, as reported by the committee, than it will cost under the amendment of the gentleman from Santa Cruz. That is not a great amount for the people of California, but it is a part of the system, and the difference between the two systems—an extravagant system and an economical system—is of the utmost importance to the people of this State. If we should frame an instrument upon the same principle, with the same disregard for economy that is shown in this report, our Constitution would be rejected by the people, because if there is one thing above all others that the people demand, it is economy in the administration of government. Who denies it? Has it not been asserted by every gentleman on this floor? Is it not the universal cry that the government of California is carried on too liberal, and too extravagant, with not one regard to the interests of the taxpayers that the changed condition of things demands. I submit that it is evident enough, and every gentleman knows it. Now, why should we tax an additional twenty thousand dollars upon the taxpayers. I protest against it. There is no necessity for it.

MR. BIGGS. How do you make it out as costing twenty thousand dollars more?

MR. CAPLES. Three thousand dollars salary and two thousand dollars traveling expenses. I make a rough estimate, it may be a little more and it may be a little less. Now, I would like to know what is the matter with my friend from Butte, Mr. Biggs. But a little while ago he gained the reputation of being the bull dog of the treasury. [Laughter.] I mean watch dog, and now he comes and demands that we shall have a commission of nine men, where five men would be amply sufficient. What is the matter? I desire to know if the gentle- is tired of the appellation of watch dog of the treasury? I desire to know if the gentleman desires to exchange that title for the title of a a pair of skeleton keys? Well, if the gentleman desires to exchange titles, I have no objections, but I warn the gentleman, if he pursues this course, whether he desires the change or not, his name will be changed to a pair of skeleton keys.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I did not desire to speak upon this matter, I shall have to ask, however, to say a few words. I favor the idea of two members from each Congressional district. Now, sir, the State contains four Congressional districts, one of them consisting of the City and County of San Francisco. The territory of the State is practically divided into but three Congressional districts; that would give a repre-

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sentation upon this Board for each sixty thousand square miles about. If I understand the objects of the State Board, it is to equalize assessments so as to make them correspond with the value of the property assessed. Now, sir, I assert that no man of limited capacity, no man of ordinary capacity, none of that class of men who get office, would be able to know the value of all the property embraced in sixty thousand square miles. Now, sir, it is urged, in behalf of economy, that four members on this Board will be as good as eight; that it will be an economical measure. Now, sir, the more these members know of the property to be equalized, the less time they will have to expend in the business of equalizing. And if, in this second district, we have two members of the State Board, one from each portion of the district, I say the work will be done quickly and better than it could be done when there is only one man representing the district. The idea that it will cost five thousand dollars for each member is an unreasonable estimate; they will not have to set more than sixty or ninety days—we know that by the length of time that will expire between the local assessments and the time of the tax levy. During that time they ought to be paid a reasonable per diem, I should say from one thousand dollars to one thousand eight hundred dollars each, and if the Board consists of eight, that will not be any great item of expense.

But I would call your attention to another matter, and that is, that under another section of this report it will be the duty of this Board to place a value upon all the railroad property in this State. And, sir, I believe it will be safer to lodge this power in the hands of eight men than in the hands of four men. Some attempt has been made to draw a line between the agricultural and mining interests; I deprecate that attempt. I believe that each interest needs to be encouraged and maintained; that the one will do all it can to foster the other. And, sir, it is a fact that each Congressional district, except the first, is composed of mining territory and farming territory. I believe, as a rule, that the class of men who would be fitted to equalize the assessments of values upon agricultural lands, would be very poorly qualified to equalize the value of mining lands. Upon the other hand, I believe that the class of men who are familiar with the mining interests of this State, are not qualified to judge of the value of agricultural lands for the purpose of assessment. Now, sir, this cry of economy is a good cry. I believe in it, but there is one thing better, and that is, efficiency of the public service. And for one, I am not willing to sacrifice the efficiency of this Board for the sake of economy, and the saving of a few dollars. When it is proposed to have one representative from each county, I say that is more than is necessary. Eight is not too large. I don't think eight will be too many. It was the sense of the Committee of the Whole that eight was about the right thing. I hope the Convention will abide by the report of the Committee of the Whole.

SPEECH OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I hope the amendment will be adopted. I do not hope so particularly in the interest of economy, but I hope it will be adopted because I believe it will make a far more efficient Board if there are only four or five than to have eight or nine, and I should think that would have suggested itself to the mind of the gentleman from Nevada. If there are eight, it will bring about a division of sentiment in the Board; there would be less concert of action and ideas; there would be more uncertainty of action. The gentleman from Sierra seemed to think that this would be a representative Board, but eight would not be sufficient to make it so. Neither would it be a representative Board unless the districts are subdivided, for even if there were eight, it would not be a representative Board. We are not to have a representative Board, any farther than to represent the State of California, and all parts of the State.

MR. BARRY. Don't you think that two from each district would make a more representative Board than one.

MR. ANDREWS. No, sir, I do not think it would be any better. It will be likely to bring about division and dissension. We want efficiency of action; we want concert of action and purpose. To make it really efficient, I would not have it consist of more than three. The object of that Board is to do equal and exact justice to the whole State, and to each and every part of the State; to represent every interest, every class, and every section, but not to represent one to the exclusion of any other. A small Board will be more efficient than a large Board. Of course, we do not contemplate a Board that shall act entirely upon their own knowledge, it must be upon knowledge acquired through research and investigation, and this can be better done by four than eight. I think this is one of the most important amendments yet presented, and I hope it will be adopted.

THE PREVIOUS QUESTION.

MR. WEST. Mr. President: I believe that each member of this Convention understands this question, and I now move the previous question.

The motion was seconded by Messrs. Brown, Howard, Larkin, and Evey.

THE PRESIDENT. The question is: Shall the main question be now put?

The motion prevailed.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Santa Cruz, Mr. White.

The ayes and noes were demanded by Messrs. Huestis, Biggs, Blackmer, Stedman, and West.

THE SECRETARY called the roll, and the amendment was adopted by the following vote:

AYES.

Andrews,	Boggs,	Charles,
Ayers,	Boucher,	Condon,
Barbour,	Brown,	Cross,
Barton,	Caples,	Crouch,
Doyle,	Larkin,	Smith, of San Francisco,
Dunlap,	Lewis,	Soule,
Evey,	Lindow,	Stedman,
Freud,	Mansfield,	Stevenson,
Garvey,	McCallum,	Swenson,
Gorman,	McConnell,	Swing,
Harrison,	Moffat,	Thompson,
Harvey,	Moreland,	Townsend,
Heiskell,	Nason,	Tully,
Herold,	Nelson,	Tuttle,
Hitchcock,	Neunaber,	Van Voorhies,
Howard, of Los Angeles,	Noel,	Walker, of Tuolumne,
Huestis,	Ohleyer,	Waters,
Hunter,	O'Sullivan,	Wellin,
Johnson,	Reynolds,	West,
Kelley,	Rhodes,	White,
Kenny,	Shurtleff,	Wilson, of Tehama,
Lampson,	Smith, of Santa Clara,	Wyatt—66.

NOES.

Barry,	Hale,	Rolfe,
Bell,	Howard, of Mariposa,	Schell,
Biggs,	Hughey,	Shoemaker,
Blackmer,	Jones,	Smith, of 4th District,
Burt,	Keyes,	Steele,
Chapman,	Kleine,	Stuart,
Davis,	Larue,	Tinnin,
Dowling,	McComas,	Turner,
Dudley, of Solano,	McCoy,	Vacquerel,
Estey,	McNutt,	Wickes—32.
Filcher,	Ringgold,	

PAIRED—Mr. Herrington, aye, with Mr. Beerstecher, no.

THE PRESIDENT. The next question is upon the amendment of the Committee of the Whole as amended.

Concurred in.

NOTICES.

MR. HALE. I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention concurred in the report of the Committee of the Whole, striking out section fourteen of the article relating to revenue and taxation.

MR. LARUE. I give notice that I will, on to-morrow, move to amend Rule Thirty-five as follows: "That the main question shall only apply to the amendment to such section or such substitutes as may be then under consideration."

ASSESSING RAILROAD CORPORATIONS.

THE CHAIR. The Secretary will read section sixteen, as reported by the Committee of the Whole.

THE SECRETARY read:

"SEC. 16. The franchise, roadway, road-bed, rails, and rolling stock of all railroads in this State, operated in more than one county, shall be assessed by the State Board of Equalization, at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties; and all other property of railroads shall be assessed by the counties in which such property is situated."

MR. AYERS. I offer an amendment to section sixteen.

THE SECRETARY read:

"Insert before the word 'townships,' in line four, the word 'towns;' and insert after 'counties,' in line six, the additional words, 'cities and counties, cities, towns, townships, and districts.'"

THE CHAIR. The question is on the adoption of the amendment of the gentleman from Los Angeles, Mr. Ayers.

MR. ROLFE. I hope gentlemen will vote for that amendment. If they will examine it, they will find that it is necessary to perfect the meaning of the section. The section as it now stands leaves out the word "towns."

The amendment was adopted.

THE CHAIR. The question is upon concurring with the amendment of the Committee of the Whole.

The amendment was concurred in.

CAPITAL STOCK OF CORPORATIONS.

THE CHAIR. The next question is upon concurring with the Committee of the whole in striking out section seventeen. The Secretary will read the section.

THE SECRETARY read:

"SEC. 17. The value of the capital stock of a corporation shall be assessed in the county in which its principal place of business is located, and separately from all other property belonging thereto; and such stock shall be assessed at its market value when the assessment is made. The real and other personal property of such corporation shall be assessed in the several counties respectively in which the same is situate. The value of such stock, over and above the aggregate value of such real and other personal property, according to such assessment, shall be taxed in the county in which the principal place of business of such corporation is located; and the value of such real and other personal property shall be taxed in the several counties respectively in which the same is situate. The shares of stock belonging to the stockholders in such corporation shall be exempt from taxation; provided, that the provisions of this section shall not apply to railroad corporations."

MR. FILCHER. Mr. President: I wish to say that I hope the Convention will refuse to strike out this section, as my colleague has an amendment which I think is an improvement. If it is in order I will

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offer it now as a substitute. I would like to have it read for information.

THE CHAIR. No substitute is in order now. The Secretary can read it for information.

THE SECRETARY read:

"SEC. —. The capital stock of all corporations and joint stock associations organized under the laws of this State, shall be assessed to such corporations and associations in the city, county, or city and county, town, township, or district in which their principal places of business are located, at its cash value; provided that the real and personal property owned or possessed by any such corporation or association shall be assessed and taxed in the several cities, counties, or cities and counties, towns, townships, or districts in which the same is situated. The excess in value only of the capital stock of such corporations or associations over the aggregate value of their real and personal property within this State, according to such assessment, shall be taxed, and shall be so taxed in the city, county, or city and county, town, township, or district in which the principal place of business of such corporation or association is located. For the purposes of taxation, the assessment list of the real and personal property of persons, corporations, and associations, owning and enjoying valuable franchises, shall include such franchises as forming a part of such property. The shares of stock belonging to the stockholders in such corporations or associations shall be exempt from taxation."

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: I was not present when this section was stricken out. I do not know what reasons were given for striking it out. I know the object for which it was intended. To my mind it was a good object. Unless there are reasons that have not occurred to me, I hope the Convention will retain the section. It is well known that there are numerous corporations in this State that have capital stock and do a good business, which have very little property to assess; and in such cases it is very proper to assess the capital stock for what it is worth. But take the case of a bank that is solvent and doing business, to assess the capital stock, and then assess all the property on which the stock is based, would be equivalent to assessing the deed to a piece of real estate, and then assessing the real estate besides. The proposition adopted here last Saturday, as a substitute to section two, provides that the capital stock, among other things, shall be assessed. The article provides that everything else shall be assessed. Under that article I don't see any way of avoiding the assessment of the capital stock of corporations, and of the property represented by the stock. Certainly there is no gentleman here but what can see the injustice of it. I simply rise for the purpose of urging the Convention to consider this matter carefully before striking this out. There are very grave reasons why it ought to be retained, particularly so if the Convention is going to stand by its action on the other.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: Some of the reasons why it was stricken out were that it conflicted with the other section. It provides for assessing all the real and personal property of corporations at the place where the property is situated, in the county, city, or district. It provides for assessing its capital stock at the place of business. Now, I have an idea that when you have assessed all the real and personal property, you have got about all the property there is. The value of their property is indicated by the value of the capital stock. The capital stock has no value whatever aside from the real property. For illustration: In the mining counties all through this State are many companies doing business. Their offices and business are mostly in San Francisco. The Assessor of San Francisco could go into those offices and assess the capital stock at its market value. The property would be assessed in the county where it exists at its full value, as per their statements made. Now, there is a double assessment of that property. There is general confusion. The cash value of the stock indicates the value of the property of the corporation. To assess the capital stock and then assess the mine too would be double taxation. There is no necessity for it after you have assessed the real property of the corporation. There is no difference between that and the capital stock. The reason it was stricken out was to stop the confusion.

MR. AYERS. Would not this stock be assessed under the Terry amendment.

MR. LARKIN. If there is any value separate from the property. But there is no such value. There can be no value to the capital stock after you have assessed all the real and personal property.

MR. MCCONNELL. I don't think the gentleman ought to complain of double taxation. He voted for double taxation.

MR. LARKIN. I don't think I have any more than the gentleman from Sacramento. I voted for the Boggs proposition. I voted for the Terry amendment as a compromise. I think the section ought to be stricken out.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I am in favor of striking this out, for several reasons. First, it provides that the capital stock shall be assessed in the county in which the principal place of business is. Now, the property of the corporation has to be protected in one county, and the tax has to be paid in another county. Take mining property. Take it in Nevada County. You have to go to some other place to collect the tax. The tax has to be paid in one place, while the expenses of Government are incurred in some other place where the property is situated. Next, I object to it for the very good reason that it makes double taxation. I don't know—I have heard so much about double taxation, I don't know but I could stand a little of it; but when it comes to treble taxation, that is piling it on too thick.

MR. HALE. I suggest the amendment offered by Mr. Burt.

MR. CROSS. Now, sir, I object to this; and the same objection will apply to the proposition of the gentleman from Placer: that it assesses the value of the capital stock over and above the value of the real and personal property elsewhere than where the property is situated. Now, you never can assess the excess in the value of the capital stock in the place where the principal place of business is, until you go to the county where the property is and find out how much that is assessed for. We have provided that the assessments shall be made out on a certain day all over the State. How are you going to make these two things come together? There are other absurdities just as glaring as this. Who is going to tell what is assessed in the other county. Then suppose the State Board changes the valuation of the real and personal property in some other county, what is going to happen? I suppose then the Assessor will have to do the work over again. We will have confusion worse confounded. After he has done all that, we come to something else. "The shares of stock belonging to the stockholders shall be exempt from taxation." Here is some more confusion. In section two we have provided that the stock shall be assessed. To whom? Why, to the men who own it. Now, we are going to assess the property; next, the capital stock of the corporation in the principal place of business, as in section two, providing that it shall be assessed. Now, in section sixteen we say it shall not be assessed. What does all this business mean? Then we come to another thing, providing that no railroad corporation shall be exempt. It is conflicting and unreasonable all the way through.

REMARKS OF MR. CAPLES.

MR. CAPLES. The objections urged to this section in Committee of the Whole were those that have not yet been urged here. The objection urged then was to the first clause, that the value of the capital stock of a corporation should be assessed in the county in which its principal place of business is. It was argued there, with much apparent force and justice, that this would give to San Francisco the taxes on a great deal of property that ought to go to the interior counties. This was urged with great force, and I think with justice, too. The gentleman from Trinity in particular, alluded to the injustice and the result of this thing, and it was stricken out by almost unanimous consent. This section would, no doubt, conflict with sections two and five. I have not been able to see the proposed amendment, and therefore cannot tell what it is. But I can see that this section is unnecessary, and therefore I hope that the Convention will concur with the Committee of the Whole, and strike out the section.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I hope this motion will not prevail; not because I am in favor of the section as it is formulated, and if it was a question of its adoption or rejection, I should vote to strike it out; but I say, sir, that it covers a subject-matter that ought to be incorporated in this Constitution.

MR. CROSS. Would it not be better to strike it out and introduce Mr. Burt's proposition as a separate section, thereby not endangering this section by keeping it in?

MR. HALE. I have no objections to that. I would ask the Chair, if this Convention refuses to strike out this section, if a substitute will be in order?

THE CHAIR. Not until the whole report has been gone through with.

MR. HALE. Then I will concur in the proposition to strike out, as I am anxious to see the Burt proposition adopted.

THE CHAIR. The question is upon concurring with the recommendation of the Committee of the Whole.

Concurred in.

INCOME TAX.

THE CHAIR. The Secretary will read section —, reported by the Committee of the Whole.

THE SECRETARY read the following additional section, reported by the Committee of the Whole:

"SEC. —. Income taxes may be assessed to and collected from persons, corporations, joint stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner as shall be prescribed by law."

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: I hope that this section will be rejected. Now, consistency is said to be a jewel. We have adopted section two, and that section is mandatory on the Legislature. It says:

"Laws shall be passed taxing all moneys, credits secured by mortgage or trust-deed or unsecured, investments in bonds, franchises, and all other property, real and personal, according to its true value in money, except as hereafter provided; but the Legislature may authorize, except in the case of credits secured by mortgage or trust-deed, a deduction from credits of debts due to bona fide residents of this State. Growing crops, and such property as may be used exclusively for public schools, and such as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation."

Now that language is very strong. It says that all property shall be taxed in proportion to its value. If that is so it is useless to give them power to pass an income tax law. Now, sir, we must either abandon section two or stand by it. There is no use whatever in making this double and treble taxation, and having all these provisions inconsistent with themselves. Now "stock" may include the capital stock of corporations, or it may include the shares of stockholders. Under this both would have to be taxed. We had better stand by the section which has been formulated with so much care. There are some few inconsistencies in sections two and five, but they can be remedied on second reading. I say an income tax is odious to the people of this State. It would be an experimental provision inserted in the Constitution. This section ought to be stricken out.

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MR. CROSS. Mr. President: I have an amendment to offer to the section.

THE SECRETARY read:

"Add to section, 'provided, that no tax shall be assessed upon incomes directly derived from property taxed.'"

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: This amendment is opposed to any double taxation. If this section should be adopted the result of it would be this: that if Mr. Dudley has a ranch of one thousand acres of land, the Assessor assesses it at its full cash value, and then when he goes to sell his wheat, or corn, or whatever he chooses to raise, and receives the pay therefor, he will be again assessed on his income, should the Legislature so decide. My idea is this: if a man has an income from property which is taxed, and he pays taxes on it, that should be sufficient. But there are many men like myself, who derive a liberal income from a business which does not require the expenditure of any capital. Physicians, lawyers, and other professional men, frequently have very liberal incomes, more so than those who have a large amount of property. They enjoy the benefits which Government confers without contributing anything to its support. It is right, and this class of men ought to be willing to stand in and pay a reasonable income tax. Therefore I offer this amendment.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I for one, hope that this section will be allowed to remain just as it is. I do not fear the danger cited by the last gentlemen, that the Legislature will pass a law taxing Mr. Dudley's farm, and then tax him for his income on that farm. I don't apprehend that the Legislature will ever do such an absurd thing as that. We must leave some discretion with the Legislature. Now, medical men, lawyers, and others, make as high as twenty-five thousand dollars a year, and the property, which is invested in the business, may not amount to two thousand dollars, and may not be assessed at one thousand dollars. The idea that such a man is only taxed fifteen or twenty dollars a year seems to me wrong, when he is making ten, fifteen, or twenty thousand dollars a year. The Legislature ought to have the privilege of stepping in and remedying the inequality. It is not mandatory, but gives them the power, if they choose to exercise it, where there is great inequality existing that cannot be remedied in any other way. Take insurance companies—the foreign companies, who have their agents here. But they have but little property here, probably consisting of nothing but office furniture, perhaps worth from twenty-five to one hundred dollars, at the principal city of the State. They may be assessed on that, pay an actual tax on that, and still the company may be making millions of dollars a year in the business of insuring. The profits are taken away out of the State by the home office in London or Liverpool, or some other place. They take the money which they make in this State out of the State, to some other State, or some other country. Now, I say, I am in favor of reaching those cases if we can. Take the Six Chinese Companies, of San Francisco. It is said that one of these companies consists of a President, Secretary, and cook. I don't suppose that their actual property amounts to one hundred and fifty dollars; at the same time the company, in the business of importing coolies into this country, may make one hundred thousand dollars a year, or five hundred thousand dollars, or five million dollars a year. I do not know that their incomes can be reached, but I say we should not deny the Legislature this power. I do not apprehend that the Legislature will ever be guilty of any such absurd thing as to tax a mining company, for instance, on its property, and then tax the income, or the amount of gold extracted. I have no fear of any such result. But if professional men, like Dr. O'Donnell and myself, are able to make ten thousand dollars a year without any capital invested, I say we ought to be made to contribute something proportionate to our income to the support of the Government.

REMARKS OF MR. SMITH.

MR. SMITH, of Kern. Mr. President: It seems to me that the amendment takes out what little good there is in this section. As the gentleman from San Bernardino argued, there are foreign corporations and non-residents who have no property in this State, who derive a large income, which is carried out of the State. Now, if there is any good in a system of this kind, it seems to me applicable to cases of this kind. I am opposed to an income tax on general principles. I think it brings about more perjury than any system that can be established. I think a measure of this kind should be acted upon with great caution. I am opposed to the amendment of Mr. Cross, and I do not like the section. Unless it is amended I shall vote against it.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: This section, as adopted by the Committee of the Whole, authorizes the Legislature to do what?

"SEC. —. Income taxes may be assessed to and collected from persons, corporations, joint stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law."

An individual may pay taxes on all the property he has, and then the Legislature may, by virtue of this provision, compel him to pay an additional tax in the shape of an income tax. The gentleman from San Bernardino tells us that he has no fear that the Legislature will do anything of the kind. If he has no fear of anything of the kind, what reason can he have for opposing the amendment of Mr. Cross? I believe it will accomplish the object which the author intended to accomplish with this amendment. With that amendment I am in favor of it. It will reach those companies doing a large amount of business here who own no property. That is the gentleman's idea, and it is a good one. But I desire to qualify the power of the Legislature in the matter, so that they not only will not but cannot do wrong.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. President: I hope that the section will not be stricken out; and I further hope that there will be no amendment to it. It reads exactly right. As I understand it, this section was drawn up and presented to the Committee of the Whole, and adopted by the Committee as a sort of safety valve upon our financial system, so that none of these rich men can find a loophole by which to escape their share of the public burden. And this is a safety valve in case the Supreme Court should make an iron-bound rule, as they have done before, which will allow certain men to escape taxation. I hope, therefore, that the safety valve will not be taken off, and that we may hold it and make it useful in compelling men to pay their taxes. There are certain companies and individuals who habitually avoid taxation. An income tax will reach them when nothing else will. I am in favor of having something ornamental as well as useful. I hope there will be no amendment on which to base any construction that may destroy the usefulness of the section. This section is like the Lord's Prayer, it covers the whole ground. It is perfect now.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I hope my friend from Nevada will not insist upon his amendment. I hope this section may not be stricken out. This is not the longest section in the Constitution, but it will be by no means the least significant. This section has been drawn with great care. There is not a word in it that does not mean something. The old Constitution provides only for a property tax. But experience has shown in this State, as it has in other States, that you cannot justly distribute the burdens of Government by a property tax alone. No two systems of taxation are exactly alike. For instance, in Pennsylvania, the tax is raised from corporations, and it is claimed that it can be distributed more equally by that means than by levying a general tax upon property. In some of the States the tax is laid on real estate alone. The tax should not rest wholly upon property. It is an unequal tax necessarily. It has been clearly pointed out by the gentleman from San Bernardino, that there are men in this State who habitually escape taxation, and who can well afford to contribute to the support of the Government. These men can only be reached by an income tax. I hope the section will be allowed to stand.

[Mr. Wyatt in the chair.]

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: I hope the Convention will indorse the action of the Committee of the Whole, and adopt this section. I believe it to be the best section in the entire lot. My friend from Sonoma says he sees double taxation in it. This section says that an income tax may be assessed, not that it shall be assessed. There is no double taxation unless the Legislature should see fit to make double taxation. If there had ever been an instance in the past where the Legislature ever attempted to levy an unjust tax, there might be some likelihood of it. Now, the fact is, this is the only safe clause whereby we will prevent double taxation, whereby the Legislature will be enabled to get taxes out of a certain class that have always escaped taxation. My friend from Nevada also sees double taxation. I have observed this, that the gentleman from Nevada is extremely jealous of the supposed interests of his constituents. That I like. He is always up and against any section that contains the word "stocks," unless it applies to railroad corporations only. He even went so far as to fancy that he saw double taxation in section seventeen. Now, perhaps the gentleman sees double. He generally stands square on his feet, but he sees strange sights. I object to the amendment offered by him, for the reason that this provision has to be construed; and if the Legislature should attempt to collect an income tax, the question as to whether the property from which that income was derived had been taxed before, would have to be settled on every case, by the Courts, and the result would be that the whole thing would be defeated through legal quibbles and technicalities. Take these foreign insurance companies, and I am not so sure that their tables and desks would not be construed as being the property from which their income was derived. The gentleman is very anxious for fear Mr. Dudley's farm will be doubly taxed. Well, sir, Mr. Dudley's farm, as well as every other farm in this State, has been doubly taxed for years; not only doubly taxed, but the income has been taxed besides, in the shape of a tax on growing crops; doubly taxed, by reason of the escape of so much other property from taxation. I have no fear whatever. Now, there is no objection to the principle of the amendment; the objection is, that it lays the section open to construction. The object of the provision has been clearly stated by others.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Nevada, Mr. Cross.

Lost.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

MR. JONES. I offer an amendment.

THE SECRETARY read:

"Amend by inserting next after the word 'taxes,' in line one, the words 'upon net incomes;' also, by striking out the words, 'or any one or more of them,' in line three."

[Mr. Waters in the chair.]

REMARKS OF MR. JONES.

MR. JONES. Mr. President: To my mind this section should receive careful attention. I am aware that this section does not meet the views of a great many, and I believe it can be made more perfect and more acceptable. It does seem to me wrong that the Legislature should have power to levy an income tax upon certain companies, or certain individuals, and leave out the rest. The Legislature might levy an income tax upon some companies and not upon others; upon some individuals and

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not upon others. If an income tax is imposed, it should be imposed uniformly upon all classes of persons, corporations, or associations. That was the only idea I had in that part of the amendment. When you say "any one or more of them," it seems to me this is the logical conclusion, that the Legislature may discriminate between persons as well as between corporations and associations. I think that would be unjust. Now, the next point of the amendment is to insert the words "net incomes." I believe it is perfectly right and proper for the State to levy a tax upon net incomes, or in other words, upon the profits of the business. There are many who now escape taxation who can more easily pay taxes than some who have a great deal of property. I would be very glad to have the privilege of paying a large tax upon a net income. Any man, or any corporation, receiving the protection and benefits which Government affords, ought to be made to pay a tax upon net incomes. I believe, when fully understood, that a tax upon net incomes would be popular in this State. I believe that the insertion of these words would materially improve the section. I believe it will remove some of the objections which have been urged here, and I think it will be more satisfactory to the people.

MR. HALE. Mr. President: I hope this amendment will not prevail. The weight of authority is all in favor of a tax upon gross incomes rather than upon net incomes. Whenever you undertake to narrow it down to net incomes you open wide the door to fraud and perjury as to what the expenses are. They will reduce large gross incomes to very small incomes by piling up fictitious expenses. That was one of the most crying evils under our recent Federal income tax law. Nor is it necessary to say net incomes. Leave that to the Legislature. The other part of the amendment is even more objectionable, as it would destroy the very object of the section. The Legislature would then have no option but to levy an income upon all corporations, if any; upon all persons, if any, which is exactly the reverse of what we intend. I hope the amendment will not pass.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Larkin, Tinnin, Shoemaker, and Biggs.

THE CHAIR. The question is: Shall the main question be now put? Carried.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Mariposa, Mr. Jones.

Lost.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

MR. MCCALLUM. Does the previous question go to the section?

THE CHAIR. Yes, sir.

The ayes and noes were demanded by Messrs. Huestis, Shoemaker, Hunter, Lindow, and Tully.

The roll was called, and the amendment concurred in by the following vote:

AYES.

Andrews,	Grace,	O'Sullivan,
Ayers,	Hale,	Reynolds,
Barbour,	Harrison,	Rhodes,
Barry,	Harvey,	Ringgold,
Bell,	Heiskell,	Rolfe,
Blackmer,	Herold,	Smith, of San Francisco,
Boggs,	Hitchcock,	Soule,
Boucher,	Howard, of Los Angeles,	Stedman,
Brown,	Howard, of Mariposa,	Steele,
Burt,	Hughey,	Stevenson,
Charles,	Inman,	Swenson,
Condon,	Kenny,	Townsend,
Cross,	Keyes,	Turner,
Davis,	Larkin,	Tuttle,
Dean,	Lewis,	Vacquerel,
Dowling,	Lindow,	Van Voorhies,
Doyle,	McConnell,	Weller,
Dudley, of Solano,	Moreland,	Wellin,
Evey,	Nason,	West,
Filcher,	Nelson,	Wickes,
Freud,	Neunaber,	White,
Garvey,	Noel,	Wilson, of Tehama,
Gorman,	Ohleyer,	Wyatt—69.

NOES.

Biggs,	Kelley,	Shoemaker,
Chapman,	Lampson,	Shurtleff,
Crouch,	Larue,	Smith, of Santa Clara,
Dunlap,	Mansfield,	Smith, of 4th District,
Estey,	McCallum,	Swing,
Freeman,	McComas,	Thompson,
Huestis,	McCoy,	Tinnin,
Hunter,	McNutt,	Tully,
Johnson,	Pulliam,	Walker, of Tuolumne,
Jones,	Schell,	Waters—30.

MR. MCCOY. I move to adjourn.

Division was called for, and the Convention refused to adjourn, by a vote of 44 ayes to 48 noes.

MR. FREEMAN. I move that section one be stricken out.

Carried.

ADJOURNMENT.

MR. BIGGS. I move we do now adjourn.

Carried.

And at five o'clock P. M. the Convention stood adjourned until nine o'clock and thirty minutes to-morrow morning.

ONE HUNDRED AND THIRTY-SEVENTH DAY.

SACRAMENTO, Tuesday, February 11th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	Reed,
Ayers,	Harrison,	Reynolds,
Barbour,	Harvey,	Rhodes,
Barry,	Heiskell,	Ringgold,
Barton,	Herold,	Rolfe,
Beerstecher,	Hilborn,	Schell,
Belcher,	Hitchcock,	Schomp,
Bell,	Howard, of Los Angeles,	Shoemaker,
Biggs,	Howard, of Mariposa,	Shurtleff,
Boggs,	Huestis,	Smith, of Santa Clara,
Boucher,	Hughey,	Smith, of 4th District,
Brown,	Hunter,	Smith, of San Francisco,
Burt,	Inman,	Soule,
Campbell,	Jones,	Stedman,
Caples,	Joyce,	Steele,
Casserly,	Kelley,	Stevenson,
Chapman,	Kenny,	Stuart,
Charles,	Keyes,	Swenson,
Condon,	Kleine,	Swing,
Cowden,	Lampson,	Thompson,
Cross,	Larkin,	Tinnin,
Crouch,	Larue,	Townsend,
Davis,	Lewis,	Tully,
Dean,	Lindow,	Turner,
Dowling,	Mansfield,	Tuttle,
Doyle,	McCallum,	Vacquerel,
Dudley, of Solano,	McComas,	Van Voorhies,
Dunlap,	McCoy,	Walker, of Tuolumne,
Eagon,	McNutt,	Waters,
Estey,	Mills,	Weller,
Evey,	Moffat,	Wellin,
Farrell,	Moreland,	West,
Filcher,	Nason,	Wickes,
Freeman,	Nelson,	White,
Freud,	Neunaber,	Wilson, of Tehama,
Garvey,	Noel,	Wilson, of 1st District,
Gorman,	O'Sullivan,	Wyatt,
Grace,	Pulliam,	Mr. President.

ABSENT.

Barnes,	Herrington,	Ohleyer,
Berry,	Holmes,	Overton,
Blackmer,	Johnson,	Porter,
Dudley, of San Joaquin,	Laine,	Prouty,
Edgerton,	Lavigne,	Reddy,
Estee,	Martin, of Alameda,	Shafter,
Fawcett,	Martin, of Santa Cruz,	Sweasey,
Finney,	McConnell,	Terry,
Glascock,	McFarland,	Van Dyke,
Graves,	Miller,	Walker, of Marin.
Gregg,	Morse,	Webster,
Hager,	Murphy,	Winans.
Hall,	O'Donnell,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Holmes and Ohleyer.

Three days leave of absence was granted Messrs. Blackmer, Glascock, and McConnell.

Indefinite leave of absence was granted Mr. Herrington on account of sickness.

THE JOURNAL.

MR. LINDOW. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

QUESTION OF PRIVILEGE.

MR. LARKIN. Mr. President: I rise to a question of privilege in relation to a matter on the article on taxation. On yesterday morning the Sacramento Record-Union published, editorially, what purported to be an extract from the second section of the article on taxation, as adopted by this Convention, offered by Judge Terry. In the report taken by the short-hand reporter of that paper, the section is correctly reported. In the comments, editorially, it is misrepresented. The intelligence of every member of this Convention is impugned. Courtesy to the Convention would demand that our actions should be fairly, honestly, and intelligently criticised. The people of this State expect, through this prominent journal of Sacramento, to receive correct information as regards the proceedings of this Convention. Now, the section referred to, and which was introduced by Judge Terry, reads:

"SEC. 2. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed; provided, that growing crops, property used exclusively for public schools, and such as may belong to

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the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in case of credits secured by mortgage or trust-deed, for a deduction from credits of debts due to bona fide residents of this State."

Now, in the editorial comments that paper has this:

"After a good deal of bickering, Terry offered what he facetiously called 'an amendment,' and, as by this time the whole subject had got beyond control, a majority voted for it, though without understanding it in the least. This amendment is a marvelous piece of work. It begins by making the concession that United States bonds shall not be taxed; a quite superfluous provision, since the Convention has no jurisdiction over them, one way or another. It then provides that 'all property shall be taxed in proportion to its nature.' What this means has not been explained, and we take leave to doubt whether any one in or out of the Convention can explain it. When a thing is taxed 'in proportion to its nature,' how is it taxed? The nature of a cow, for instance, is to be graminivorous, but how is the Assessor to tax a cow 'in proportion to' her disposition to eat grass? We shall have a singular system of taxation if this provision is adopted, and if any serious effort is made to carry it into effect."

I would say here, I deferred from referring to this yesterday, supposing that to-day they would correct it, as fairness, and honesty, and decency required they should do, but they have not done it; and now, in justice to this Convention, and the gentleman who offered it, I make these remarks so that it may go upon our proceedings, and the people of the State may know that we are misrepresented. This paper is taken more generally by the people of this State than any other paper in the State. As long as the Convention is running, and from the very beginning, its course has been one of misrepresentation, and falsifying, and casting ridicule upon the action of this Convention. Their reporters here, that are sitting at our desks, report us correctly, so far as I have seen; I have no fault to find with them, but this editor deliberately wrote that article, and has failed to retract.

MR. REYNOLDS. Mr. President: It will probably relieve the mind of the gentleman from El Dorado, to state, that, as I am informed, the word "nature," of which he so much complains, is the result of a typographical error that appeared in all of the San Francisco papers on Saturday afternoon and Sunday morning. By some freak of nature, [Laughter] the types made the report read "nature" in the place of "value." How it is that a printer will sometimes get a word misspelled, where it is impossible for any other man to mistake it, is one of those things that no fellow ever yet has found out, but such is the case. I am informed that the editorials in the Record-Union office are written up on Sunday, before their Saturday's report of the Convention, and they therefore did not have their own report, which was correct, to go by, but took their information from the San Francisco papers of Sunday morning. The gentleman, no doubt, is astonished that any editorial writer should fall into such an error, perhaps, but I think that the writer was justified, under the circumstances.

MR. TULLY. I rise to a point of order: That this discussion is out of order, and foreign to the subject.

MR. REYNOLDS. I think I have a right to explain.

THE PRESIDENT. The gentleman from San Francisco will proceed.

MR. REYNOLDS. I was trying to excuse the blunder on the part of the paper. I have no more to say.

MR. O'SULLIVAN. Mr. President: It seems then that all the malignity and the billingsgate that has been hurled at this Convention by the Record-Union, has to be blamed to the poor printers. [Laughter.] That infernal malignity which has been hurled at members of this Convention since the very first day that we assembled here, intimating that we are a set of numbskulls and fools, by the editor of that paper, an unnaturalized Englishman, is to be blamed to the poor printers. I say it is not so; the printers are more intelligent than the editors and proprietors of the newspapers. [Laughter.]

MR. FILCHER. I move a vote of thanks to the Record-Union; I think it is doing a great deal more good than harm by the course it is pursuing.

PETITIONS.

The President and Mr. Gorman presented petitions, requesting the exemption of certain property, used for charitable, educational, and church purposes, from taxation.

Laid on the table, to be considered with the article on revenue and taxation.

TAXATION.

THE PRESIDENT. The Convention will resume consideration of the article on taxation. The question is on engrossing the article.

SUCCESSION TAX.

MR. AYERS. Mr. President: I send up a resolution.

THE SECRETARY read:

"SECTION —. The Legislature may impose a succession tax upon all legacies and distributive shares derived from the estates of deceased persons; provided, that except in the case of non-resident aliens, no child, brother, sister, father, mother, husband, or wife of any deceased person, shall pay such succession tax, unless the distributive share of such person amounts in the aggregate to more than five thousand dollars in value.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I have drafted that section from what is known as the proposed Laine Constitution. I think that a provision of that character ought to be placed in this Constitution. A succession tax is now in force in various countries of Europe, but I am not aware whether any of the States of the Union have yet adopted one. Such a tax has been very widely discussed in this State, and it has been very generally conceded that the tax would be a just and wise one. If we should give the Legislature the authority to impose such a tax it would increase the revenues of this State from that source, and it would relieve the burdens of taxation on other sources which are not so well able to bear it. A succession tax is one which is easily and cheerfully paid. I shall not trouble this Convention with much argument upon the subject, but I will merely submit the section for discussion.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I hope this amendment, with a slight amendment to it, will be adopted; that is, that the Legislature should have power to impose a graduated succession tax, depending upon the amount of the estate. Now, in the case of small estates, it is, perhaps, a hardship on the heirs, to impose anything like a heavy tax, but in the case of large estates, there can be no reason on earth why they should not contribute something towards the revenues of the State. Of course, a tax of this kind ought not to be imposed where it will prevent a man from leaving his family in such a position that they may have an opportunity to receive the benefits of education, or to receive, substantially, the fruits of the enterprise of the deceased, but in the case of large estates, while a great deal of revenue may be detained by the State, there is no hardship practiced upon anybody. This matter of the inheritance of property and of receiving the donation of property by will, is a mere matter of municipal and statutory regulation. There is no natural right which absolutely gives to any particular person, or class of persons, all the property of which a man dies possessed. The inheritance and the distribution of property, under the laws which govern inheritance, are matters entirely of statutory regulation, varying according to the policy of different States and different countries. For instance, the proportion of estate which goes to relatives in different degree, varies in different portions of the States and different countries. Now, in the case of large fortunes, I cannot see any reason why a man, after death, who has earned, for instance, a fortune of ten millions of dollars, should be permitted to distribute that entire property as he may wish, to any persons whatsoever. I cannot see any reason why a portion of that property should not be inherited by the State; why the State, which has protected him through life, should not, at his death, receive a portion of the property which he has earned. We cannot sit down here, in the Constitutional Convention, and provide the precise proportions, but suppose you begin with small tax on the estates amounting to ten thousand dollars—the inheritance amounting to that—you could go on until you reach the millions, increasing the percentage until you get it up to ten per cent. Now, take the cases that have happened within this State within the last year. No less than three men have died in this State within the last year whose aggregate property amounted to at least twenty-five million dollars. If we had had a tax of ten per cent. upon that property—a matter which I urged on several gentlemen last Winter, when the Legislature was in session—no human being would have been injured, no injustice would have been done to anybody, and the State would have derived two million five hundred thousand dollars from the estates of three men. The tendency of property under our system of corporations, and under our present system of speculation, is to be concentrated in a few hands. It is a great public evil, and one which ought to be reached by all means which will not do injustice to individuals, and I can conceive of no better means of doing justice to the State and at the same time to individuals, and securing a proper revenue to the Government, than to impose a graduated tax. It is one of the cases where I think we should depart from the strict rule of equal taxation—according to the amount of property, where the tax should be graded—and I suggest to the gentleman, if he would accept it, to allow the word "graduated" to be inserted there in its proper place, before "succession." It ought to be so. Suppose a man dies worth fifteen thousand dollars. He has a family of five children. In such a case as that, perhaps there ought to be no tax, where there are immediate descendants and where each child receives three thousand dollars in the ordinary course of distribution. That should be exempt. But, on the other hand, suppose that he leaves an estate of fifteen thousand dollars, and that he wills it to some relative or some friend; it ought to come within this principle of taxation, then.

Then again, where he leaves, for instance, the amount of ten thousand dollars, or fifteen thousand dollars to his widow, there should be, if any, but a small tax imposed upon that; but if he leaves a property worth a million there is no reason why the State should say by its laws that every dollar shall go, if he leaves no will, to his widow and children, and none to the State which has protected him, and where he has acquired that vast amount of property. Then if you make the tax graduated it falls with no severity upon anybody. Take the case of a late proprietor of a portion of the Central Pacific Railroad. Why should not the State receive a percentage upon that property? Take the case of the late Michael Reese, without wife or child, but with relatives residing outside of the State, many of them. Why should not this estate have paid a taxation? Why not the estate of Mr. O'Brien? There can be no reason, and on the other hand it would be a source of revenue which oppresses nobody. You are not depriving people of property which they have earned. The heirs do not earn the property, and the State has a right to make its own regulation upon the subject. The Legislature should be enabled to act without being trammeled, and should be enabled to graduate the tax according to the nature of the case in the amount of the property.

MR. BIGGS. You propose to tax a man's estate because he dies.

MR. CAMPBELL. No, sir. A man dies leaving a certain property, and it is entirely in the discretion of the State to say what disposition of that property shall be made after his death. The laws of no two States agree upon that subject. You are not taxing a man because he dies.

MR. BIGGS. You tax the property.

MR. CAMPBELL. You must provide by law for its distribution. You may call it taxation, or you may call it inheritance.

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MR. BIGGS. You propose to tax the property when the man lives, and if he dies put another tax upon the same property the same year.

MR. CAMPBELL. When a man dies, of course, he owns the property no longer. The distribution of that property after his death is entirely a matter of State regulation, is it not? If there was no statute that the children should inherit it, his children would not inherit it; it would escheat to the State. The State was the original owner; and these persons derived their right to it simply from the statutes of the State, and from no other source.

THE PRESIDENT. The gentleman's time has expired.

MR. BEERSTECHER. I would inquire if Mr. Campbell offered an amendment.

MR. CAMPBELL. Yes, sir.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I would state that a tax or a percentage of this character has been levied upon the estates of deceased persons in the State of Michigan for a number of years, and there is a certain per centage upon every thousand dollars over and above a certain amount, that is taken out of the estate as probate charges. The Court takes out a certain percentage, and every estate must go through the Probate Court. As has been said by Mr. Campbell, the right of taking the property of a deceased person flows entirely from the statutory law, from the statute of wills, from the statute of descents. There is no original right to take this property. For a long time the real estate held by a person upon his death escheated to the State, and by the State was given out to such persons as the crown saw fit to give it to. That is the law of Japan to-day. When a man dies his real estate escheats to the State. It was the law of England for years and years, and merely a constitutional law of England changed the rule and gave the right of inheritance. It is right that when parties take by descent, or through the medium of testamentary devise, that they should pay a reasonable percentage to the State; provided that the amount they take is over and above five thousand dollars. There is no injustice in it at all, and it has been adopted by at least one State in the Union.

MR. WATERS. Mr. President: There is an amendment, I think, should be tacked on to this. We propose now to tax men in every conceivable way during their life. Now it is proposed to tax them for the privilege of dying, and I think you ought to add a tax for being born, and then you will have it.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I cannot permit this proposition to go unchallenged, and I must confess that I am greatly surprised that it should emanate from the source that it does. The question is brought up here, fair and square: Does the right to property exist only during the lifetime of the owner, and does the right to that property cease when he dies? I think, Mr. President, that the right to convey is as sacred as the right to hold, and the converse of that proposition is a new doctrine to me. Gentlemen refer to Japan and medieval Europe for an example in illustration of this species of confiscation. They may be correct, but I hold that the eternal principles of justice and right are contravened by this proposition. Is it the right of taxation? The gentleman says he would graduate it so that on large estates there may be a tax of ten per cent. levied. Now, it would be a very comfortable thing for the State, in the case of the death of a Mackay, a Fair, or O'Brien, to confiscate two or three or five hundred thousand dollars. Such a tax would defray all the expenses of the Government, and we would be free from the incubus of taxation. This would be very nice and comfortable, but would it be just? There is the proposition. Is it taxation? I deny it. It is confiscation—nothing more, nothing less—and I repudiate the right of the State to confiscate a man's property because he dies. I hold that he has the same right to convey it at his death that he has during his life. Now, gentlemen propose to punish a man for dying; take away the estate when he dies; say that when he dies he shall forfeit all right to the property, and that the State will take charge of it. We will give to your heirs what we choose to, and we will retain for ourselves what we choose to. I deny that there is any taxation in it, and there is no pretense of taxation. It must be done under the head of confiscation, or condemnation, for the crime of having died. This is the first time I ever heard it charged that it was a crime to die. Now, if the gentleman will put it upon the basis of taxation, and let it be equitable and uniform, then he might with some pretense claim that it was taxation; but he does not do that. He claims that it should be a graduated tax. That places it fairly and squarely upon the basis of confiscation. I appeal to the sense of justice and right of gentlemen on this floor to vote down this proposition, and show that they are governed by higher and nobler principles than to exempt themselves from the burdens of Government by condemning and confiscating the property of men who are so unfortunate as to die.

REMARKS OF MR. JONES.

MR. JONES. Mr. President: On yesterday, the Convention adopted an additional section to this article, which, so far as the Constitution could, conferred upon the Legislature the authority to levy an income tax upon persons, corporations, joint-stock associations, or companies, or any one or more of them, in such amounts and in such manner as they should see fit. For my own part, I was unable to sustain that proposition, but it has been passed by the body. Now, it seems to me that that reaches any receipts, whether by descent, inheritance, or by profit in business, that any person in the State can have or acquire; and it looks to me as though this is straining rather to attempt to find something more in the nature of receipts which shall be taxed under another additional section. It appears to me clear that money received as a legacy would be an income to the person receiving it, for that year, and as to the graduation of the taxation upon it, let the last section of the article, as it now stands, to which I just referred, cover that. There is one remark which it seems to me may well be made here, and that is, that the scheme of the Constitution we are framing is, to a large extent, taking upon itself the character of a grant of power to the Legislature. In this article, nearly half a dozen instances of that kind occur, in which a provision is not made mandatory upon the Legislature, but is put in the form of a grant of power to the Legislature in face of the fact that it is clearly understood that no grant can be made; that without restriction or limitation, the Legislature will have full power. Now, this certainly is going to confuse the minds of the people in regard to the character of the Constitution and the theory upon which it is framed, and it seems to me that the provisions can only have the effect of a sort of suggestion to the Legislature, that perhaps they might as well think about it and see if they won't do so and so. If that be the only effect, I think we had far better keep them out. I think there is perhaps, more of them in this article than in most of the others which have passed through a second reading. Now, if it be desired that the Legislature shall be required to do such things as are included in this apparent permission, undoubtedly the phraseology ought to be changed, and it should be made mandatory, and if it be not desired; I do not see why we should cumber the instrument with a great variety of these grants, unless we mean to go on and specify every thing which we suppose that the Legislature shall have the right and authority to do. Unless we can assume that the Legislature shall have the right to do that which is not inhibited or limited, why then we have got to grant all the power that they are to exercise. I therefore make the point that all that is sought to be done by the proposed section, is already provided for, according to the interpretation of the Convention, and according to the proper interpretation of the words used in the section adopted yesterday.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I did not intend to say anything at all upon this matter, but after having read very carefully the two sections which are proposed, I will speak very briefly upon them. I understand that under this new system which we have now adopted, all provisions of the Constitution are to be mandatory, unless otherwise expressly provided. If I am correct in that, and there is one general sweeping clause, making everything mandatory, then this section, although it reads as though it were advisory, would be obligatory upon the Legislature, because it does not expressly say, in this connection, that it is not mandatory. I think, therefore, that all of these sections, that the Legislature may impose an income tax, that the Legislature may impose a succession tax, etc., become mandatory under that provision. That is my own conviction, and I suggest that to other gentlemen in construing these sections which are phrased in this way. Now, there are some States that are said to be good States to come from, but I do not think that this Constitution, with this section in, would be very good as a part of an immigration scheme. I do not think it will invite many immigrants to come into the State. I think there is a place to stop, although some gentlemen think there is no place to stop in this matter of taxation. I do not consider it at all necessary for this Convention to adopt every clause of a Constitution which is found to exist in other States. I would rather hear some gentleman say something upon the reason and the policy and good sense of the provision, than to say that it comes from other States. We do not know what may have induced the people of other States to pass upon them. Our situation is a little different from that of the people of Kalamazoo, in Michigan, and their habits and customs and usages may not be suitable for us. It may be first-rate for them, but I would rather hear something said as to why we should adopt it. Now let us see what this amounts to. The property of the man in life is taxed; during the year he dies. Now, is it to be taxed again? If he pays the tax once, or if his administrator pays it, which he will have to, that is one taxation upon his property. Now comes the tax upon the succession, which is the same property, because it passes to the heirs, devisees and legatees.

Now, gentlemen, let us not be carried away by any false notion about a few very rich people. This applies to the great mass of the people of the country, to the small and moderate estates of the working people, the mercantile people, merchants, professional men, and others, who have on the average but limited estates. Now, everybody knows that when a man dies he never is so rich as he is supposed to be by the people at large. You never know how poor a man is until he dies and his estate is wound up, and we know how far it falls short of what his estimated wealth was during his lifetime. When the head of a family dies, it is not only a misfortune in calamity to the family, because they lose that person who is dear to their affections; but, also, because it cuts off their supply. The income is stopped. If it comes from labor or from a profession, why it stops. The family have no means to go on, and the distress ensues immediately. Then you go through all the formality of winding up the estate. There is an immense shrinkage, and there is suffering in this family who have lost their head, arising from all this combination of circumstances. Now, it is proposed to add to the terrors of death this confiscation of a portion of the estate. It is opposed to my first ideas of justice and right, and although it prevails in Kalamazoo, in Michigan, my own sense of justice, my own reason induces me to vote against this tax upon succession. I believe that it would be mandatory, and the Legislature would be compelled, under this, to inflict this tax. It is double taxation. I do not care to go away back into an original theoretical discussion as to whether a man has a right to the property of his ancestry, or whether a man has a right to will a thing or not. It has become a part of the common law of the country that a man has a right to dispose of his property. Whether you call it a natural right or not, it is a right which the people recognize, that a man should have the right to dispose of that which he has, by the labor of a long life, acquired. That being the case, I think we had better stop, and not tax again the unfortunate people who lose the head

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of their family, and not add an additional terror by way of confiscation of a portion of the property.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: The proposition which is contained in this section is attacked with the customary denunciation—that it is confiscation. When the estate falls from the hands of a dead man, and he is deprived of the ability and power to hold it by death, the reason why any one lays claims of right to the property is because the law grants it. A great reason exists in public policy for the adoption of this system, or for lodging the power in the Legislature to adopt it. I disagree altogether from the gentleman who spoke last, that the provisions of this Constitution, where they are expressly permissive, and only permissive, shall be construed to be mandatory. I am aware of the construction, as put upon the statute, where the use of the word "may" is construed to mean "must." That certainly cannot apply to the provisions of a Constitution where you have a provision that the provisions of the Constitution are mandatory, unless by express words they are declared to be otherwise, and then otherwise express it by making it permissive. I rose to speak upon this question to call the attention to the great question of public policy involved. It must be remembered in these United States that we have a larger equivalent in a certain extent to the operation of the laws of primogeniture—the accumulation in single hands of large estates. I remember of reading that Mr. William H. Vanderbilt, by means of the immense possessions left him, was actually driving under his control the whole transportation of the United States east of the Rocky Mountains. I say that to tax this does not destroy the power of the deceased to convey his property, and I am in favor of leaving these vast estates in the hands of the people acting through their Legislatures. I shall therefore vote for the proposition of the gentleman.

The ayes and noes were demanded by Messrs. Beerstecher, Brown, White, Ayers, and Condon.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Freud,	Nelson,
Barbour,	Garvey,	O'Sullivan,
Beerstecher,	Gorman,	Reynolds,
Belcher,	Grace,	Smith, of Santa Clara,
Bell,	Harrison,	Smith, of 4th District,
Burt,	Joyce,	Smith, of San Francisco,
Campbell,	Kenny,	Steele,
Condon,	Kleine,	Swenson,
Dean,	Lindow,	Tuttle,
Doyle,	McCallum,	VanVoorhies,
Evey,	McComas,	Wellin,
Filcher,	McNutt,	West,
Freeman,	Moffat,	White—39.

NOES.

Andrews,	Hitchcock,	Schell,
Barry,	Howard, of Los Angeles,	Schomp,
Barton,	Howard, of Mariposa,	Shoemaker,
Biggs,	Huestis,	Shurtleff,
Boggs,	Hunter,	Stedman,
Boucher,	Inman,	Stevenson,
Brown,	Jones,	Stuart,
Caples,	Kelley,	Swing,
Casserly,	Keyes,	Thompson,
Chapman,	Lampson,	Tinnin,
Charles,	Larkin,	Townsend,
Cross,	Larue,	Tully,
Crouch,	Lewis,	Turner,
Davis,	Mansfield,	Vacquerel,
Dowling,	McCoy,	Walker, of Tuolumne,
Dudley, of Solano,	Mills,	Waters,
Eagon,	Moreland,	Weller,
Estey,	Nason,	Wickes,
Hale,	Neunaber,	Wilson, of Tehama,
Harvey,	Noel,	Wilson, of 1st District,
Heiskell,	Reed,	Wyatt,
Herold,	Rhodes,	Mr. President—68.
Hilborn,	Rolfe,	

MR. DUDLEY, of Solano. Mr. President: I desire to offer an additional clause to section two as it stands.

THE PRESIDENT. There is no amendment in order to section two.

MR. BURT. Mr. President: I desire to offer an additional section.

THE SECRETARY read:

"SEC. —. The capital stock of all corporations and joint-stock associations organized under the laws of this State shall be assessed to such corporations and associations in the city, county, or city and county, town, township, or district in which their principal places of business are located, at its cash value; provided, that the real and personal property owned and possessed by any such corporation or association shall be assessed and taxed in the several cities, counties, or cities and counties, towns, townships, or districts in which the same is situated. The excess in value only of the capital stock of such corporations or associations over the aggregate value of their real and personal property within this State, according to such assessment, shall be taxed, and shall be so taxed in the city, county, or city and county, town, township, or district in which the principal place of business of such corporation or association is located. For the purposes of taxation, the assessment list of the real and personal property of persons, corporations, and associations, owning and enjoying valuable franchises, shall include such franchises as forming a part of such property. The shares of stock belonging to the stockholders in such corporations or associations shall be exempt from taxation."

THE PRESIDENT. The amendment is substantially the same as section seventeen. It is not in order.

GRADUATED LAND TAX.

MR. O'SULLIVAN. Mr. President: I offer an additional section.

THE SECRETARY read:

"SEC. —. The State Board of Equalization shall classify the lands of the State each second year, each class to have its specific valuation per acre, such valuation to be the basis of the assessment. The Legislature shall provide a system of graduated taxation on all lands."

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: A while ago, when I offered my proposition, fixing a limitation to ownership as a remedy for land monopoly, we were told by gentlemen that it would not do; that the monopolies could be reached through taxation. Well, now, I wish to test the sincerity of those gentlenen who appeared to be horrified at the bare suggestion of limitation. If they are sincere in their professions when they acknowledge the evil of land monopoly, and honestly believe that measures should be taken to relieve the State of this curse, and prevent it in the future in a legitimate, lawful manner, I challenge them to now prove their sincerity by expressly giving power to the Legislature to provide for a graduated tax on land, so that all large estates, and especially those of the land-grabbers may be reached. If a man holds one hundred thousand acres of land, as several land pirates in this State do, unimproved, and for the purpose of speculating on the necessities of poor settlers who come to California seeking to make homes here, it is just and proper that an extra tax should be levied on the excess of land which he holds to the injury of the State.

Mr. President, land monopoly is a monstrous wrong and outrage upon the majority of the people, so flagrant, so infernally infamous, devilish, and hoggish, that it sometimes seems strange to me that the disinterested multitude, who are robbed of their natural rights, do not rise up in their might and smash the infamy at one blow, as the people of France did at the close of the last century. Now, sir, I want to see whether the farmers and grangers of this Convention, who are not all monopolists, I believe, and who profess to be reformers on every other subject, and in favor of regulating and curbing various other monopolies, will prove their sincerity and honesty by providing, in a perfectly legal manner, for the abatement of land monopoly. I want to see whether a majority of this Convention are friendly to this odious system of monopoly of the soil for speculative purposes, or whether they are men whose sense of justice dictates that it shall be openly and honestly dealt with as justice demands. If the Convention refuses to do something tangible on the subject of land monopoly, to place something more than meaningless words in the Constitution, then I say we will have failed in fully performing our sworn duty to the people in the work of reform which called us together, and which would insure the ratification of the new Constitution. Gentlemen assert that we have already provided for reaching the land monopolist in sections three and four. I deny it. I cannot see it. The old Constitution says taxation shall be equal and uniform, and still we know it never has been so in this State. The land monopolist has always had his land assessed at a low figure, and it will be now as it has been in the past, unless you provide for a graduated tax on large land holdings in excess of a specified number of acres.

MR. CROSS. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend, by inserting before 'land,' in line one, the words 'agricultural and grazing.'"

MR. CROSS. Mr. President: There are classes of land in this State which cannot be classified so as to be assessed and taxed by the acre; as, for instance, the mining lands of the State cannot be so classified, and the lands on which great cities are built, and yet this additional section, as proposed by the gentleman, which has some excellent features in it, provides that the State Board of Equalization shall classify all of these lands; when they are classified, they are to be assessed according to classification. It seems to me that this section, as proposed, has some good features in it, but that it would need some such modification.

MR. TOWNSEND. I would like to ask the gentleman why we should discriminate in favor of mining lands?

MR. CROSS. I am not in favor of discriminating in favor of mining lands. I mean to say that it would be impossible to classify mining lands so that they could be assessed by the acre.

MR. ROLFE. Why?

MR. CROSS. Because one hundred feet square of ground might be worth one hundred millions of dollars, while the same sized piece, directly opposite, might be worth nothing. There is no basis upon which you can classify mining ground.

MR. TOWNSEND. Is the gentleman not aware that there has been thousands of acres of mining grounds assessed? Where there is more than one acre there should be a graduated tax, and it should be confiscated.

MR. WILSON, of Tehama. Mr. President: I am utterly opposed to any more of these Troy Dye amendments. Some of us got our lands under the laws that exist. Now, these men that are grumbling about lands, if they will come and go with me, I will show them thousands and millions of land, way back on the frontiers, which they can take without trying to confiscate the lands of honest men. The most of us men got our land rightfully, and I am utterly opposed to any such measures as these men are going in for here. We went in with them to tax all of this property, in every shape and form, and now they want to confiscate it. I am actually afraid that, after a little, they will commence Troy Dye on us, and kill us for our land.

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MR. TOWNSEND. I would like to amend that so that all property, of whatever kind, over fifty dollars in value, or twenty-five dollars, should have a graduated tax; that if a man has a second suit of clothes, it should be taxed extra. I am in favor of it, if I can get it extended to all property.

MR. TULLY. Let us have everything.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: This subject needs very little discussion. [Laughter.] The proposition of the gentleman from San Francisco is offered in good faith. I do not doubt that he means it; but it is an attempt to do by indirection that which he is satisfied we cannot do directly. The discussion here has satisfied him that we cannot say to a man: "You shall not have but so many acres." The decisions of the Courts, the rights of property, the authority of the United States, everything is in the way of that. But he now assumes that we can do by indirection—that is, by a graded tax, prevent a man from doing the same thing. Now, this is just as great a mistake as the other proposition, because if you could put a graded tax on, there is no limit to it. There is nothing in it. In regard to the amendment of the gentleman from Nevada, I have this to say: that it is wholly and utterly impracticable, and cannot and would not reach the end he desires. He says that land shall be divided into agricultural and grazing land, apparently under the impression that this would facilitate an equitable and just assessment. Now let us see how this would work. Here within two or three miles of this city we have land that is worth and will sell for twenty-five dollars an acre. We call it agricultural land. I have land fifteen miles east that I would be glad to sell for fifteen dollars an acre, that is just as good, if not a little better. Now, according to the gentleman's amendment, these tracts of land being agricultural land would be assessed alike. The value of the land does not depend upon the fact of whether it is grazing or agricultural land. It depends far more upon its location than it does upon its quality, as every gentleman knows. Now, the end arrived at and desired by this proposition is, perhaps, a good one. I am in favor of it, if the gentlemen advocating it will confine themselves to law, and justice, and possibilities; but when they go off into these chimerical and Utopian ideas, I am against them. I am in favor of checking, by every lawful means, large landholders. I recognize the fact that it is against the public interest, and that the public interest would be promoted in a large measure by small land holdings; but in this, as in everything else, we are limited by possibilities; we are limited by the rules of law, and justice, and equity; and we cannot transcend those rules without impairing the very foundations of Government. We must confine ourselves to those broad, comprehensive principles that underlie all Government, and the very moment we depart from those principles we are at sea. We are without a Government that is worth the name of a Government when we do it. Any means that the gentleman can devise that will secure a just and equitable assessment of large land holdings in proportion to their value, I will assist; but the moment that he assumes to do what is unjust, what is unlawful, what is not within our province to do, then I am against him.

MR. WATERS. Mr. President: I do not think we want any of this section or the amendment either. The amendment offered by the gentleman from Nevada, Mr. Cross, as I understand it, limits this graduated tax to agricultural and grazing lands. Now, I fail to know what is meant by the term graduated tax. But from what I have heard about it here, I understand that the tax upon the first thousand dollars is to be so much, on the next thousand dollars so much more, and so on until you take it all. That is what I understand by the graduated taxation that these gentlemen talk about. Now, if that is the case, why make a distinction between grazing and agricultural lands, and mineral lands, and lands with fine buildings upon them. It is just as easy to figure up the assessments on the one as the other. Now, one reason why I think we do not want this section is this, that it would limit the discretion of the County Assessors only to say in which class any particular class of land would fall. In other words, there would be a first class, a second class, and a third class of land. Say that the Board of Equalization divides the land of the State into three classes, according to quality. For instance, adobe land so much, sandy loam so much, etc., no matter where it may be. Consequently, first-class land in San Bernardino County, six hundred miles from market, would be assessed at the same rate as the orchard lands in Alameda County, close to the market. I do not think this Convention will vote for any such proposition. It is bald upon its face, and unjust and wrong.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Nevada, Mr. Cross.

The amendment was rejected.

THE PRESIDENT. The question recurs on the adoption of the amendment offered by the gentleman from San Francisco, Mr. O'Sullivan.

Upon the amendment of Mr. O'Sullivan, the ayes and noes were demanded by Messrs. O'Sullivan, White, Gorman, Doyle, and Beerstecher.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Doyle,	Huestis,
Barbour,	Evey,	Joyce,
Barry,	Farrell,	Kenny,
Barton,	Filcher,	Keyes,
Beerstecher,	Freud,	Lindow,
Bell,	Garvey,	Nelson,
Condon,	Gorman,	Neunaber,
Cross,	Grace,	O'Sullivan,
Davis,	Harrison,	Reynolds,
Dowling,	Hilborn,	Ringgold,
Smith, of San Francisco,	Vacquerel,	Wickes,
Stedman,	Wellin,	White,
Steele,	West,	Wyatt—40.
Tuttle,		

NOES.

Andrews,	Hunter,	Rolfe,
Belcher,	Inman,	Schell,
Biggs,	Jones,	Schomp,
Boucher,	Kelley,	Shurtleff,
Brown,	Lampson,	Smith, of 4th District,
Burt,	Larkin,	Soule,
Campbell,	Larue,	Stevenson,
Caples,	Lewis,	Stuart,
Chapman,	Mansfield,	Swing,
Charles,	McCallum,	Thompson,
Crouch,	McComas,	Tinnin,
Dudley, of Solano,	McCoy,	Townsend,
Dunlap,	McNutt,	Tully,
Eagon,	Mills,	Turner,
Estey,	Moffat,	Van Voorhies,
Freeman,	Moreland,	Walker, of Tuolumne,
Hale,	Nason,	Waters,
Harvey,	Noel,	Weller,
Heiskell,	Pulliam,	Wilson, of Tehama,
Hitchcock,	Reed,	Wilson, of 1st District,
Howard, of Los Angeles,	Rhodes,	Mr. President—64.
Howard, of Mariposa,		

PAIRED—Mr. Herrington, aye, with Mr. Shoemaker, no.

MR. WYATT. Mr. President: We have discussed the article on revenue and taxation until we have arrived, as near as we possibly can, at the common mind in this Convention, and I shall now move the previous question on the motion to engross and order to a second reading the article.

Seconded by Messrs. McComas, Hunter, Larkin, and Dunlap.

The main question was ordered.

The article was ordered engrossed and read a second time.

JUDICIAL DEPARTMENT.

THE PRESIDENT. The next business in order is the report of the Committee of the Whole on the article on judiciary. The Secretary will read the amendments proposed by the Committee of the Whole, and then the amendment to section two.

THE SECRETARY read all the amendment offered by the Committee of the Whole, and then the amendment to section two, as follows:

THE SUPREME COURT.

"SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in department and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. If the order be not made within the time above limited, the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the power of the Chief Justice during such absence or inability to act."

MR. BARBOUR. Mr. President: I send up a substitute for section two.

THE SECRETARY read:

"The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in bank and in departments, and shall be always open for business. The Court may proceed in departments whenever the condition of business may require it, under such regulations as may be prescribed by law. In the determination of causes, all decisions

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of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated."

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I am bound to confess that I have not given the attention to this proposition which the apparent importance of it seems to require, not having been a member of the Judiciary Committee and relying very much on the judgment and experience of the members of that committee. But, sir, upon examination of the section proposed, I find that it launches us upon a new and an untried field, and we should proceed with extreme caution when we undertake to go into an experiment with the Supreme Court of adjudicature of the land, such as is proposed in this Convention. We have been constantly reminded of adhering as much as possible to the known landmarks, and I maintain that if there is any point, or any place or subject, where that advice should be observed carefully, it is in reference to the constitution of our Courts. I have said, sir, that the proposed section is, in some respects, an extraordinary proposition. It is a new departure entirely in the constitution of a Court from anything we have ever heard of before, in Europe or in this country. A double-headed Court is proposed to be created, and it is attempted in the section to regulate the details for the procedure of that Court. Now, sir, the first thing that strikes one is the apparent reasonableness of the proposition, that wherever the overcrowded condition of the calendar may require the Court can divide itself so as to hear all cases and to discharge the business. On the face of it I say that is what appears to be attempted by the Committee on Judiciary in bringing forward this proposition. An investigation, however, of these details will find that there are some monstrous powers proposed to be conferred, and some which to put here in the Constitution by an inflexible rule may work hardship upon the people and wrong upon litigants in the Supreme Court. I desire to call the attention of this Convention to two or three of these apparent monstrosities which appear upon the face and by reading between the lines of this two-headed Court. I desire right here to recall the fears of the friends of the railroad, when those who supported the proposition for a Railroad Commission were accused of getting up a monstrous despotism. Some of the gentlemen who were loudest in proclaiming their fears are now in favor of a proposition to confer powers never before heard of upon the presiding officer of a Court of justice; to put in his control, in point of fact, the decisions of the greatest questions. Absolute and arbitrary control lodged in the hands of one individual to control the administration of justice in this State. Now how do they provide that these departments shall be established? Do they leave it to the people, under the regulations of law? Do they leave it to the Court, under the rules that they prescribe? No, sir; but they lodge the power in the hands of the Chief Justice, absolutely and arbitrarily to establish two Courts out of the six Justices that are elected outside of him. Here is the language, beginning on line five:

"The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time."

Now, sir, he has also the control of the distribution of the cases conferred upon him. He may go through the calendar of the business before the Court, study up the principles involved in the cases, and knowing the opinion, feelings, and sentiments of the Judges, may constitute out of these six a Court of particular complexion, distribute the business into that Court, and control the decisions of the Court in bank by other privileges and powers that are conferred upon him, and which I will call attention to. This first proposition is monstrous, to confer upon him the absolute power to constitute a Court, and then, if that does not suit him, then to turn around and change it at any time by a reassignment of the Judges. But, not content with giving him that general power, not to create a permanent Court, but a mere temporary Court, entered up by a motion in the minutes of the Court, it is further provided that the Chief Justice may take one Judge out of one department and send him into another. On the face of it the proposition is monstrous. Now, commencing on line fourteen, look at this other power conferred:

"The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank."

Now, sir, we lodge in him the discretion, after having given him the authority to constitute a Court of one of these departments according to his own will, to overthrow and overturn the decisions by simply ordering them to be transferred to be heard in bank. If a decision suits him he allows it to stand. If a decision is contrary to his own judgment or will, he immediately grants an appeal. That is all it amounts to. It grants to the Chief Justice the power to control the right of the citizen to appeal. It proposes another rule, and then three kinds of hearing. You may possibly go to a department and make your application for a rehearing; you may attain it, and the judgment may be affirmed. Then the presiding Judge, without hearing anything, and according to his own will, may order it to be brought up in bank, and heard there again the third time, giving him the control of a virtual appeal from the judgment of one tribunal to the judgment of another.

Now, again, an extraordinary power also conferred. The power is conferred upon the Chief Justice to take a case away from the Court in a department, either before or after judgment. Now, I maintain that the committee—not deliberately, not intentionally—have provided for a dead lock, and there is not a provision in there by which you can get out of that kind of a dead lock, because, in the first place, we have provided, that when they sit in departments, the unanimous decision of three Judges is necessary to pronounce the judgment; now, that judgment cannot be reviewed unless by the approval of the Chief Justice, calling it up to be heard in bank. He may do that, but suppose that the opinion of the Court stands two Judges one way and one Judge the other, you have not got a judgment. You have been heard in there and there is no proviso at all, unless the Chief Justice concludes to order it to be heard in bank, to get it out of that Court at all. Therefore I say that the Committee on Judiciary have made a positive provision by which a man can get into the Supreme Court of the State of California, and may stay there, without having his case determined at any time. It is a positive dead lock in that department; there is no method of getting out of there at all, unless all three of the Judges concur in pronouncing a judgment. Now, sir, another very extraordinary provision to which I desire to call the attention of the Convention—and the time does not allow me to elaborate—is this: That after a judgment has been pronounced in one of these departments, it requires the consent of the Chief Justice, and of two Associate Justices, to make that judgment a final judgment, and to stand as such, and requiring it to remain thirty days. Now, that does not require that the assent of the Chief Justice shall be in accordance with the judgment of the two Associates in that department, but it may be the judgment of the Chief Justice and two of the Associate Justices, members of another department, who have never heard the case. A monstrous proposition, sir. The general objection I make to the section is, that instead of accomplishing what ought to be intended—expedition in the transaction of business, and speedy judgments—I foresee, in the arrangement of this section, a positive means of spinning out the trial of cases and the rendition of judgment in the Supreme Court. Why, after you have obtained your judgment, here is a constitutional provision that it is to lie there for thirty days, not for a rehearing or any subsequent proceeding, but it is to stay in *statu quo* for thirty days, waiting the approval of the Chief Justice and two Associate Justices, and then all the subsequent proceedings may go on just as they always have done, spinning out the business of that Court infinitely more than now, when so much complaint is made of the laws' delay.

Now, the proposition I have offered there contains all that is good in the section, and leaves all these matters of procedure, all these matters of the regulation of the business of the Court, just where they were left in the old Constitution—to regulation by law, and to regulation by the officers of the Court itself. Is not that proper? Do you want to lodge such an extraordinary power in the hands of a Chief Justice whom you propose to elect for twelve years, and whom you cannot get rid of, except by the doubtful process of impeachment? This is altogether, sir, a monstrous proposition, and gentlemen have been here arguing day after day, and month after month, that we propose to strip the Legislature of all power by the various propositions which have gone through this Convention, and yet they have brought in a proposition here which ties the hands of the people in the control of their highest Court of judicature, and lodges it in the hands of one man who has been imposed upon them for twelve years, and no way to get rid of him. It is a complicated and cumbersome arrangement, which, if attempted at all, ought to be left in such a shape that if it is found to be working badly, the interposition of the law could be invoked to make it effectual for a good and useful purpose.

THE PRESIDENT. The gentleman's ten minutes have expired. The question is on the amendment to the amendment. The Secretary will read it.

THE SECRETARY read:

"The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in bank and in departments, and shall be always open for business. The Court may proceed in departments whenever the condition of business may require it, under such regulations as may be prescribed by law. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated."

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: There seems to be no desire upon the part of the members of the Convention to discuss the views presented by the gentleman from San Francisco, Mr. Barbour, but, as Chairman of the Judiciary Committee, I will say something about this section, and remove what I conceive to be a misapprehension on the part of the gentleman as to the meaning of section two. The amendment as proposed by him is simply a very brief abstract of this section two, leaving out some of the machinery which the Committee on Judiciary deemed necessary in order to make this section fully practicable and useful. Now I do not see any ground for any denunciation of this section. I do not myself see any horror in it, or anything to alarm anybody, nor did the committee see anything of the kind in the section. My recollection is that the section passed the Judiciary Committee without any opposition, and certainly without any of the objections which are propounded by the gentleman. Under our system of practice here, ever since the Supreme Court was organized the remittitur has been withheld until the thirty days shall elapse. During that time either of the parties may petition for a rehearing, and that petition for rehearing is a part of the practice of that Court. The petition for rehearing is intended to call the attention of the Supreme Court to some omission, something overlooked, something which has occurred which justifies the rehearing of the argument of the case; so that when the judgment is pronounced one of the parties files that petition. The Court takes it up and if they are satisfied that the case justifies reargument they set it down for reargument, and the judgment is then vacated and the case goes on the calendar for a second argument.

MR. BARBOUR. I would ask the gentleman whether I am correct or not, that this petition for rehearing is not to be made until after the expiration of the thirty days? I understood that it could not be made until after thirty days.

MR. WILSON. Not at all. I am explaining what is the necessity of the term which is specified here. The gentleman made the objection that this is spinning out the time. I am explaining that in all cases

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the filing of a petition in the Supreme Court ties up the case, and it is always suspended until the Court acts upon it, and then the remittitur goes out. The object of this is to enable the Judges themselves to review the decision, hear objections to it, and grant any relief that may be necessary for a reargument of the case. The system it seems to me is a very admirable system, and I see no objections to it at all, or any thing but what commends itself to my judgment. The Court is to be composed of a Chief Justice and six Associate Justices. There is a provision for sitting in departments. Now, when you come to sit in departments, there must be some arrangement of these departments, some Judges assigned to one department and some to the other, either by the Legislature or by this Convention. Now, as this is part of the judicial system, a part of a system which should go into operation with the necessary machinery to work it, the Judiciary Committee deemed it very proper to enter into some details here. As a matter of course, on all this Constitution there has got to be more or less legislation. But the system here devised is a constitutional system. The Courts shall sit in two departments. Now it has a Chief Justice. That Chief Justice, as a matter of course, has the power that all Chief Justices have, more or less, in all the Courts. For instance, the Chief Justice of the Supreme Court of the United States is the presiding Judge of that Court, and has the power to assign all cases, so that after cases are argued, he exercises that power in his discretion of saying to one of his associates that he assigns the case to him for the purpose of writing the opinion, and he is called upon to write the opinion. That is a very important power. He arranges the business of the Court in other respects. He arranges the calendar. What is the objection to that. There is no great tyrannical power to be exercised by him. He takes up his calendar and may find there are a number of cases that are alike. He sends them to one department. I have sometimes seen fifteen or twenty tax cases on one calendar. They ought all to go to one department. Suppose there are a series of criminal cases? They may be sent to one department because in studying that particular class they are more ready to proceed from one case to another of that kind. The Chief Justice assigns that business to the different departments. There should be no other motive on his part for doing anything other than that which would facilitate the business of the Court, unless he should have a wanton desire to be wicked, which would hardly be presumed in a person holding an office of that kind. There could be no sort of reason why he would not justly assign the departments and the cases to the departments. Now, cases are also to be heard in bank, because the two departments sitting separately might come in conflict. They might decide different ways on some question of law. Now, this clause allows that in such a case as that that the case could be heard in bank for the purpose of removing a conflict between the Judges.

MR. BARBOUR. Why do you provide a different rule in reference to the Superior Court of San Francisco?

MR. WILSON. The twelve Judges in San Francisco are to try all the cases of the Probate Court; the Criminal Court, civil cases; and the special cases all come before that Court for arrangement by the Judges. It is very proper that a *nisi prius* Court should have a different kind of arrangement, and one which would be entirely unsuitable for the Supreme Court. These details are merely intended to bring the machinery of the Court into practical operation, and this discretion of arranging a routine mode and management of trying the cases is, in my judgment, and in the judgment of the committee, very well placed in the Chief Justice. I am unable to see the force of the gentleman's argument, and he would simply turn over this matter to be provided for by the Legislature, while I think it is better provided for in this section than the Legislature could fix it.

MR. SCHELL. Mr. President: I would like to suggest that the power as proposed to be fixed in the Chief Justice is not as stated by the gentleman from San Francisco, Mr. Barbour. I understand that the power to order to be heard in bank by the Chief Justice is only limited to those cases prior to judgment in one of the departments. I think you will find that that is so. "The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment." That does away with the objection raised by Mr. Barbour.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I wish to state an objection or two that I have to the section two, as reported by the Committee of the Whole, and a word or two why I am in favor of the amendment offered by the gentleman from San Francisco. I am opposed to the order of the Courts sitting in bank, as laid down by the report of the committee, for the same reasons as stated by Mr. Barbour. I think that the rule should be that the Court should sit in bank. Now, I suppose that no advocate ever appeared in Court but would prefer to argue his case before a full bench, and therefore it seems to me that the Court should sit in bank as a rule, and only in departments when it becomes necessary, and that is why I prefer the reversal of the order as stated by the amendment of the gentleman from San Francisco, Mr. Barbour. I am likewise opposed to this provision of the report of the committee, that there shall be two departments. I prefer the language of the amendment, the Court may sit in bank or in departments, and leave that to the Court when it may be necessary. I am opposed to the provisions in lines three, four, and five, that "there shall be two departments, denominated respectively Department One and Department Two." That requires the business to be done in departments, except in certain cases, when it is required to be done in bank. That objection seems to me to be overwhelming to the section as it now stands. I have another objection: "The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time." I am opposed to putting this power in the hands of the Chief Justice over the assignment of Justices in department, coupled with the assignment of causes, which occurs lower down in the section. I am opposed to putting that as an inflexible rule in the Constitution. It should not be there. Let that be subject to legislation that may be changed, or subject to rule of Court that may be adopted.

[Cries of "Louder."]

MR. REYNOLDS. Not to be heard is a misfortune that we labor under here most of the time. I admit that it requires the greatest force. This inflexible rule of placing the entire power of assigning Judges to departments, and of assigning business, placed by the Constitution in the Chief Justice, seems to me to be not exactly the thing to do. It never was done before, and this is one of the experiments we do not need to try. It is just as well to let the Legislature make the rule. Another objection is, that there is too much of it. There is infinitely too much detail in this section, as well as in one or two others in this report, and that is why I am in favor of the amendment offered by Mr. Barbour. In declaring this principle, we should reverse the order so that the Court shall sit in bank, but may sit in departments, and the remainder should be left to legislation and to rules adopted in Court.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. President: I am opposed to the amendment offered by the gentleman from San Francisco, because it changes the whole theory of the Court. The theory upon which the committee went was, that there should be two departments, with three Justices each, and a Court in bank, where cases might be reviewed in certain instances. "The Court may sit in bank and in departments." Well, now, under that provision, a case may be heard *de novo* in bank, without having been heard in department, which I think is overturning the whole theory, and is destroying, practically, the usefulness of the Court. It seems to me that it is a proposition not to be entertained. We have provided for two departments, because one Court has not time to hear and determine causes, and unless we adhere to that, we ought to strike out the Court in departments, and have merely one Court of appeal. Then, again, the amendment of the gentleman says: "The Court may proceed in departments, whenever the condition of business may require it, under such regulations as may be prescribed by law." That is leaving the Legislature the whole regulation of the business of the Appellate Court, in both departments, and in the Court in bank. I object to that for two reasons: First, that the Legislature is not competent—certainly not as competent as the Chief Justice—for the arrangement of the business of the Court. It seems to me that that must strike every one so perfectly obvious, that the Supreme Court knows more of the business of the Court, and is more competent to arrange it, than a Legislature possibly can be. I think the report of the committee ought to be adhered to; I think it is proper and right. Another objection to the amendment of the gentleman is, that it is deficient in detail, so utterly deficient that it has no life. There is no *modus operandi* to it, and you cannot get along with it.

MR. BARBOUR. Was there any in the old Constitution?

MR. HOWARD. We did not have two Supreme Courts in the old Constitution.

MR. BARBOUR. How did they get along?

MR. HOWARD. It was only one Court, and they got along under rules which they were enabled to frame for the regulation of the transaction of business in that Court. They got along easy enough, but if you leave the Legislature to fix the docket, to assign the cases and assign the Judges, which is the gentleman's proposition stripped of all verbiage, I think you would have a beautiful Supreme Court. I think, however, that what the gentleman said in the opening of his remarks, that he had not studied this matter a great deal, was correct. And there is the danger. When a committee has studied a thing for weeks and months and present here a report, persons who acknowledge that they have not studied it are permitted to rush in and overrule the committee by amendments which are ill advised, ill considered, and ill digested.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from San Francisco, Mr. Barbour.

Upon the amendment, the ayes and noes were demanded by Messrs. Barbour, Condon, Joyce, Swenson, and White.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Herold,	Ringgold,
Barbour,	Hunter,	Smith, of San Francisco,
Bell,	Joyce,	Swenson,
Condon,	Kenny,	Swing,
Estey,	Larkin,	Tuttle,
Farrell,	Mills,	Vacquerel,
Freeman,	Nelson,	Wellin,
Grace,	O'Sullivan,	White,
Harrison,	Reynolds,	Wyatt—27.

NOES.

Ayers,	Chapman,	Harvey,
Barry,	Charles,	Heiskell,
Barton,	Cowden,	Hilborn,
Beerstecher,	Cross,	Hitchcock,
Belcher,	Crouch,	Howard, of Los Angeles,
Biggs,	Davis,	Howard, of Mariposa,
Boggs,	Dunlap,	Huestis,
Brown,	Eagon,	Inman,
Burt,	Evey,	Jones,
Campbell,	Filcher,	Kelley,
Caples,	Garvey,	Keyes,
Casserly,	Hale,	Lampson,

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Larue,	Schell,	Townsend,
Lewis,	Schomp,	Tully,
Mansfield,	Shoemaker,	Turner,
McCallum,	Shurtleff,	Van Voorhies,
McComas,	Smith, of 4th District,	Walker, of Tuolumne,
McNutt,	Soule,	Waters,
Moreland,	Stedman,	Weller,
Nason,	Steele,	West,
Pulliam,	Stevenson,	Wickes,
Reed,	Stuart,	Wilson, of Tehama,
Rhodes,	Thompson,	Wilson, of 1st District,
Rolfe,	Tinnin,	Mr. President—72.

MR. CROSS. Mr. President: I send up an amendment to section two.

THE SECRETARY read:

"Insert after the word 'judgment,' in the twenty-second line, the words 'any three Justices may, either before or after judgment by a department, order a case to be heard in bank.'"

MR. CROSS. Mr. President: I wish to state briefly that as the section is now formulated no case can be heard in bank except the Chief Justice consent to it. If the whole of the other Justices of the Supreme Court desire that a case be heard and decided in bank, still that cannot be done unless the Chief Justice consent that it be done. This amendment provides that three of the Justices of the Supreme Court may require a case to be heard in bank.

MR. WYATT. Mr. President: I hope that in that respect it will be modified. The Chief Justice, under this section, has too much power. He is absolutely the Court. He can dictate the class of decision. There ought to be some power vested in the balance of the Justices by which some direction can be given to the business of the Court. I therefore hope that the amendment will be adopted.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

THE SUPREME COURT.

THE PRESIDENT. The question is on the amendment of the gentleman from Nevada, Mr. Cross.

MR. WILSON, of First District. Mr. President: I do not see any objection to the amendment, but I would suggest that it be made four Justices instead of three. Four would be a majority of the Court, and it would read all right.

MR. CROSS. If there is no objection I will consent to the word being changed to four.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Nevada, Mr. Cross.

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

The amendment was concurred in.

JURISDICTION OF THE SUPREME COURT.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section four.

THE SECRETARY read:

"SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof."

MR. ROLFE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after the word 'equity,' in line two, the words, 'except such as arise in Justices' Courts,' so as to read: 'SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.'"

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I wish to call the attention of this Convention to section eleven of this article: I will read it:

"SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; provided such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens, nor the value of the property amounts to three hundred dollars."

Now, this amendment was added to section eleven, after section four had been passed by the Committee of the Whole. Now I take it for granted that it is not the intention of this Convention to allow any appeal in these small cases directly from the Justices' Courts to the Supreme Court, and if you will examine this closely I think that you will find that such will be the case unless we amend it. Now, if I should loan a man two dollars and fifty cents, and he should pawn his jackknife as security, I could enforce that lien in the Justice's Court, and appeal from there to the Supreme Court. I think in these small cases, by the time a person has got into the Superior Court on appeal that is about as far as they should go. I do not think that the Supreme Court ought to be encumbered with these small cases of forcibly entry and detainer which arise in Justices' Courts. I have no doubt that this amendment will readily commend itself to the judgment of the Convention. I would like to hear from the Chairman of the Judiciary Committee on that point, to see whether I have overlooked anything myself.

MR. WILSON, of First District. I presume that question too might be raised as the gentleman says. This section eleven was adopted as amended after section four had been passed by the Committee of the Whole. I doubt very much myself whether the Supreme Court would have a right to hear any case on appeal from the Justices' Court unless means were provided by the Legislature. Section four defines the jurisdiction of the Supreme Court, and it is not capable of entertaining such cases, unless the machinery be supplied by the Legislature, unless upon a writ of error. There is no objection to the amendment, however.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment.

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole, as amended.

MR. MCCALLUM. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'cases,' in line seven, to the word 'on,' in line eight, and insert 'amounting to felony.'"

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I do not propose to occupy much of the time of this Convention, but simply call attention to this matter. The Committee of the Whole added these words which I now propose to strike out. That gives the right of appeal in almost all classes of cases. Heretofore, when we had the County Courts, which were lower in grade than the Superior Courts, the limit as to appeal was felonies alone. Now, we raise the grade of these Courts which are to try misdemeanors, and thus change the law so as to give the right of appeal in all such cases. It will burden the Supreme Court with a great deal of this small business, which heretofore has never gone to the Supreme Court.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: It seems to me, that in the shape in which the committee have amended it, it is better, really, than it would be with the amendment proposed by my colleague. The Supreme Court would not be burdened, as the gentleman supposes, because this only gives appeals in the higher classes of misdemeanors. As the section was reported, it provided that there should be an appeal in all criminal cases prosecuted by indictment or information in a Court of record, upon questions of law alone. That would cut out all appeals in that class of cases which are prosecuted on complaint in the criminal Courts; it would only admit of appeals in that class of cases in which the Grand Jury presented an indictment, or in which an information had been filed, so that the only cases in which there would be an appeal would be in the higher classes of misdemeanors, which require prosecution on indictment or information. Now, that amendment was adopted with reference to cases of libel, but there are other cases where the Courts have felt that there ought to be an appeal. Take the offense of obtaining property under false pretenses; there the penalty is very heavy, though it is only a misdemeanor. In that class of cases, important questions of law may arise, which ought to be the subject of discussion in the Supreme Court as well as in the other Courts.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment of the gentleman from Alameda, Mr. McCallum.

Lost.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

The amendment was concurred in.

JURISDICTION OF THE SUPERIOR COURTS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section five.

THE SECRETARY read:

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"SEC. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also, in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; also, of all matters of probate, and also of divorce and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State. Said Courts and their Judges shall have power to issue writs of mandamus, certiorari, prohibition. quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be served on legal holidays and non-judicial days."

MR. CROUCH. I offer an amendment.

THE SECRETARY read:

"Insert after 'State,' in line fifteen, the following: 'provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate affected by such action or actions is situated.'"

REMARKS OF MR. HALE.

MR. HALE. Mr. President: It will be observed by the language of the section that their process extends to all parts of the State. That is right; but without this amendment the result would be that an action for the foreclosure of a mortgage, or the enforcement of a lien upon real property, wherever it might be, might be brought in any county in the State. We know that a very large proportion of the real property is owned or controlled by the twenty thousand corporations of the State, and as nineteen thousand of them, probably, have their chief place of business in San Francisco, the business would all have to be done in the San Francisco Courts. Unless we adopt some such amendment as this, all the actions for the foreclosure of mortgages on real property throughout the State would be brought in San Francisco. It would abolish a well settled rule of law that all actions of this kind must be prosecuted in the county in which the property is situated.

MR. WILSON, of First District. How would that operate upon a mortgage or deed of trust upon land in different counties, all embraced in one instrument?

MR. HALE. In such cases as that the law has been that the suit could be instituted in any one of the counties in which the land was situated. This amendment could be made to conform to that.

MR. WILSON, of First District. As presented the amendment would create that difficulty. The statute itself will cover the ground.

MR. HALE. We have had four or five efforts to repeal that statute. Therefore, I hope the Constitution will settle the matter forever. I think it just and right that the amendment should be amended so that where real property under one mortgage lies in two or more counties, the suit may be brought in any one of them. That will make it conform with the theory of our law heretofore. If you commence suit in San Francisco to foreclose a mortgage, it necessitates having the parties go to that city from the interior. You may take most of the States in this Union, and the law is in accord with the amendment which I propose here.

REMARKS OF MR. JONES.

MR. JONES. Mr. President: I hope the amendment with the modification suggested, may be adopted. I think it will cure some grievances which have existed, and prevent those which are likely to exist. In fact, a new class of difficulties will arise in all likelihood under the offset system which we have adopted, founded upon the system of taxing the mortgage and the property too. There will always be the question of the apportionment of the taxes paid upon the mortgage during the life of the mortgage. This will give rise to a great many suits to determine these questions. That is a grievance which we have now nothing to do with. I merely mention this as one of the considerations. The amendment will only be according to that which has been the statute law heretofore. There may be only a question of a few dollars as to the tax paid, yet it would be no less burdensome to the party to have to repair to a Court several hundred miles away, simply to protect his own interest, when aside from that, he might as well let the matter go by default.

MR. HALE. I will amend the proposition, and ask the Secretary to read it as amended.

THE SECRETARY read:

"Insert after 'State,' in line fifteen, the following—'provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions is situated.'"

THE PRESIDENT. The question is upon the adoption of that amendment.

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole, as amended.

Concurred in.

ELECTION OF SUPERIOR JUDGES, FILLING VACANCIES, ETC.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section six.

THE SECRETARY read:

"SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; provided, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter, and one for the Counties of El Dorado and Alpine; and, provided, that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, Los Angeles, Sonoma, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; provided, that the twelve Judges of the Superior Court elected in the City and County of San Francisco at the first election held under this Constitution shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term."

MR. CAMPBELL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add to section six, 'at the first election under this Constitution, a separate ballot-box shall be provided for the reception of votes for Justices of the Supreme Court and Judges of the Superior Courts, and they shall be voted for upon ballots distinct from those used for the election of other officers.'"

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I offered a similar amendment before. Now, we all know that an attempt was made, under the old Constitution, to separate the judicial from the general elections, because it was deemed important to keep the judicial elections, as far as possible, removed from politics. That effort failed. It was found that where there was so small a number of officers to be elected, there did not seem to be the general interest felt. Then, again, the expenses of the election were greatly augmented. This provision will involve no additional expense except the furnishing of ballot-boxes. I hope the amendment may be adopted.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I am opposed to the amendment. I believe one ballot-box is as much as one Board of Election can watch and watch well. I do not believe that these men who are running for Supreme Justices and Superior Judges should be so dignified that they will not associate with men who are running the Government. I think their names will not be contaminated by association with other men. We had an experiment, for a time, in removing the election of Judges from the contaminating influences of politics, and of all the humbugs we have ever tried that is the biggest. Now, in order to remove these gentlemen from the contaminating influences of politics, we are going to have separate ballot-boxes, whitewashed. I hope the Judges will be of a class that do not need whitewashing. It is ridiculous. We are liable to frauds, and liable to mistakes in using these ballot-boxes. They are liable to misuse. It is entirely unnecessary, and will answer no useful purpose.

MR. BARBOUR. Mr. President: I am opposed to this amendment. I would have no objection to it if it could be incorporated into the statute, under the Constitution; but certainly, as an iron-bound constitutional provision, it is an absurdity, and I shall oppose it.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: Our present statute, in regard to elections, requires two separate elections, one general election, and one about six weeks afterwards, to elect judicial officers. Now, we propose to change that, and say that there shall be but one election. I suppose the statute, on that head, would be annulled by the adoption of this Constitution, and there would be but one election. It says that this Constitution shall go into effect July fourth, but that portion with reference to the election of officers, must go into effect before that, necessarily; therefore the statutory provision would be repealed, and there would no difficulty at all.

[At this point, Mr. Brown, of Tulare, sneezed, whereat Mr. Rolfe said: Mr. President, I do not propose, as a member of this Convention, to be sneezed down. Applause and laughter.]

MR. HOWARD, of Los Angeles. Mr. President: The chief objection to this is, that it would lead to confusion, trouble, and difficulty. I do not oppose it for the reasons given by Mr. Larkin, but because if you have two ballot boxes it will lead to confusion.

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THE PRESIDENT. The question is on the adoption of the amendment to the amendment.

Lost.

MR. LARKIN. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'and one for the Counties of El Dorado and Alpine.'"

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: In the Committee of the Whole I offered an amendment consolidating these two counties. I did it in the interest of economy. But as none of the other counties are willing to make the least sacrifice for the purpose of saving the treasury, it is not worth while for these counties to undergo the hardships and inconveniences alone. I therefore move this amendment.

REMARKS OF MR. WILSON.

MR. WILSON, of Fourth District. Mr. President: Since the Committee of the Whole adopted this amendment, consolidating the two counties, I have taken pains to examine with regard to this district, and I learn from gentlemen who reside there, that it is very impolitic to unite these two counties. They are so widely separated that in winter time it is impossible for the Judge to get from one county to the other. It would take, probably, during some seasons of the year, from eight to ten days to get from one county seat to the other, and in some seasons it would be an impossibility. These two counties should not be united at all, because there can be no matrimonial felicity between them—no harmony of action. Yuba and Sutter are differently situated, because it is only a few minutes walk from one county seat to the other.

The amendment was adopted on division—ayes 85.

MR. McCOMAS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after 'Sonoma,' in line sixteen, the words, 'Santa Clara.'"

MR. McCOMAS. Mr. President: I hardly think Santa Clara can be said to have full justice. We find, by a comparison, that Alameda County casting eight thousand three hundred and one votes, and has forty-one million dollars property, and Los Angeles casting six thousand six hundred and seventy-one votes, with fifteen million dollars, each have two Judges, while Santa Clara, with six thousand four hundred and two votes and twenty-eight million dollars property, has but one Judge. I do not believe it is possible for one Judge to transact the business there.

MR. TULLY. Mr. President: I trust the Convention will adopt this amendment, and give two Judges to Santa Clara County. As I said before, in the Committee of the Whole, the bar of that county want two Judges, and I think the people do also. I have a petition here from the bar.

MR. BELCHER. Mr. Laine states that one will do.

MR. TULLY. Mr. Laine is the only member of the bar who opposes this amendment. Judge Belden says that no one man can do the work. The delegation are solid for this except Mr. Laine, and I believe if he were here he would now be in favor of two Judges.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: This amendment is without any great consequence so far as the single county of Santa Clara is concerned. I think it may be just that Santa Clara should have another Judge, as the report comes from the Committee of the Whole, and it is, I believe, equally just that one additional Judge should be given to Sonoma County. Now, sir, I believe instead of increasing the Judges we should start in and reduce them. I am sorry the gentleman did not wait and see whether we are going to reduce. If we did, the argument would not be so strong as now. If we allow this entering wedge to be driven in we will have an increase of several Judges before we get through. I know the expenses of this system have been increased some fifty thousand dollars. I know gentlemen will say, why not strike off one from Alameda? That is entirely different. We have double the population of most any of these other counties, and more than double the property in some cases. We have there now one District Judge and one County Judge, making two. So with Los Angeles—they will have the same number which they have now—one County Judge and one District Judge. Sacramento is in the same shape as reported by the committee. In the Committee of the Whole Sonoma was added. Then came the argument that if Sonoma was added why not add Santa Clara. Of course, the argument is good. But the question with me is, why not strike out Sonoma instead of increasing the other counties to correspond? The question is, shall we strike out any of the Judges of San Francisco? Only last session the districts were increased by one, because the thirteenth district was a portion of the City of San Francisco. I had something to do with drafting the bill. Now we have increased the number from five Judges to twelve.

MR. WILSON, of First District. You are very much mistaken. We are taking the Probate Court and the Criminal Courts and adding them together in the shape of Superior Courts.

MR. McCALLUM. I object, unless the gentleman speaks to the point on which I am now speaking.

MR. WILSON. The difficulty is I am speaking too much to the point.

MR. McCALLUM. I am aware that you have five District Courts. You have the County Court, which would make six in all. I am aware that the argument of the gentleman is that there are some other Courts, three in number, which he claims are Courts of record, which would make nine altogether. Yet they report twelve Superior Court Judges, at a salary of five thousand dollars, or sixty thousand dollars a year for San Francisco alone. We are not here to legislate for localities, but for the whole State. Let us equalize this thing. Let us strike out two from San Francisco. Even then they will have one more than they have now. At the next session the Legislature may increase it if necessary.

MR. WILSON, of First District. Do you know how many cases there are on the calendar in San Francisco?

MR. McCALLUM. The gentleman is getting on another branch. I do not know.

MR. WILSON. Do you know what business there is in the Probate Court?

MR. McCALLUM. No, sir; I know there was no demand at the last session except what came incidentally from our county.

MR. WILSON. Don't you know that they created the Municipal Court of Appeals at the last session?

MR. McCALLUM. I am now assuming that we shall consider the whole three as Superior Courts, making ten in all.

MR. WILSON. Do you know whether ten are enough or not?

MR. McCALLUM. I believe that number is sufficient, under the circumstances stated. It is only a year until the Legislature meets, and then if the number is too small it can be increased.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I shall vote for this amendment. I shall also vote for two Judges for San Joaquin. They would have been put in by the Committee of the Whole if Mr. Laine and Judge Terry had not objected. From both those counties we have petitions asking for two Judges. I am opposed to this cheese-paring economy. Let us give what is necessary to do the business. It strikes me as an extraordinary proposition that we will not furnish a system that is adequate and just because it may cost a little more. There is nothing in the argument that the new system is going to cost more than the old. I venture the assertion that it will be cheaper.

MR. McCALLUM. Do you understand me as saying that I am in favor of reducing the present number of Judges?

MR. HOWARD. Yes, sir. I understood you were making some small cheese-paring somewhere.

MR. McCALLUM. I propose nothing of the kind.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I am very much surprised at the position taken by the gentleman from Alameda, in endeavoring to state to this Convention how many Judges are necessary to do the business of San Francisco. We to-day in San Francisco have five District Courts. In addition, we have the Municipal Court of Appeals, the County Court, Probate Court, Municipal Criminal Court, and the City Criminal Court, making in all ten Courts, which Courts will all be wiped out and included in the Superior Courts, with twelve Judges. It is a fact known to every one, that it is impossible to bring a case to trial there under a year. It is desirable and absolutely necessary for the speedy execution of justice, that we should have two additional Judges.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: I concur with the gentleman from Alameda. I can see in this movement a scramble for office. Now, sir, I did not come here for the purpose of legislating my friends into office. It would seem, from the disposition manifested here, that many gentlemen are desirous of creating as many offices as possible, for the purpose of getting every prominent lawyer in the State upon the judicial bench. Now it is certainly necessary that we should exercise some economy here. If we go on in this way every county in the State will ask for two Judges. I propose to stop right here.

MR. TULLY. Do you know anything about the business of Santa Clara County?

MR. TINNIN. No, sir; I don't pretend to know anything about it. I say it is the same thing over. Gentlemen want to create all the offices they can. I don't think it is necessary.

MR. TULLY. That is a singular proposition from a gentleman who does not know anything about the business of the county.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: The increase is all right. We have already provided in this section that Los Angeles shall have two Judges, and the population of Los Angeles, according to the last census, is fifteen thousand three hundred and four. We have provided that Sonoma shall have two Judges, and that county had, at the last census, nineteen thousand eight hundred and nineteen people, and now has about thirty-three thousand people. The County of Santa Clara, at the last census, had twenty-six thousand, and now has about thirty-six thousand. Los Angeles has now probably thirty-three thousand. Now, sir, if these counties are to have two Judges, I don't know any reason why Santa Clara, with a larger population, should not be accorded the same number. They have a large amount of business there, and they need two Judges.

REMARKS OF MR. WELLER.

MR. WELLER. Mr. President: This question was raised before in Committee of the Whole; I offered an amendment, giving the county two Judges. It was opposed by Mr. Laine. At the same time members of the bar there assured me that they could not get along with one; that one Judge could not do the business. That was written to me. I had a letter from Mr. Delmas, and one from Mr. Belden, who said that two thirds of his time is taken up with Santa Clara County business. I only ask what is right in relation to that matter. We pay over one hundred thousand dollars into the State treasury every year, whereas Los Angeles and Sonoma pay a little over fifty thousand dollars.

MR. McCALLUM. I stated that Santa Clara County was clearly entitled to two Judges as the matter now stands. I propose to vote against it for the purpose of striking out the others.

MR. WELLER. That has nothing to do with it. We are entitled to it because we actually need it. There is no imagination about it. I do not ask it because I want to accumulate offices, but because it is abso-

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lutely necessary to a proper administration of justice. We demand it because it is our right.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: This will be a curious looking section when we get through with it. We started in on the theory that there should be one Judge in each Superior Court, with several provisos. Now the section is about half provisos. Then the salaries were to be five thousand dollars a year, payable out of the State Treasury, which makes a great deal of difference. Now it has come down to "you tickle me and I'll tickle you," between some of the counties. I don't know where it will stop. A great many of these places are mere sinecures, where there are not a dozen cases a year, perhaps, where the Judge has nothing to do but to go hunting and fishing. Now, sir, it seems to me that we ought to set the very lowest estimates, and allow the Legislature to increase them if necessary. To say that the Legislature may diminish them is to argue what will never be done. It won't do. I insist that the City of San Francisco can have its business done with ten Judges, and I know it. Some of these old fellows, as soon as Court adjourns, proceed to eat and drink. How few of them go home to work, as practicing lawyers do. Ten industrious, faithful Judges can attend to all the business. I am sure if the Judges will work as men ought to work who are paid well, there would be no trouble. When these old fellows get on the bench, one active, industrious man will do more than a dozen of them. They go on at ten o'clock, or half past ten o'clock in the morning, try a little case, or set it for some other day, and adjourn; then, if they feel like it, hold Court for a couple of hours in the afternoon, and adjourn. It is true that the five District Courts in San Francisco are two or three hundred cases behind. Some of these Courts, like the County Court, do almost nothing. Take the Probate Court, and the Judge transacts more business than three or four of the others. We propose to change the system so as to have one Court with several Judges. In that way the business will be divided between them, and will be kept up. I am a strenuous advocate of economy, and I call on the Convention now to stand by it.

MR. WHITE. Mr. President: I will vote for no increase in the number of officers, and on every occasion I shall vote to decrease them. I will rise in my seat and let my voice be heard againt any proposition to increase the expense of Government and pile up more offices to be filled and paid for by the already overburdened taxpayers of this State.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. President: As to whether the County of Santa Clara has sufficient business to require two Judges, I have no personal knowledge. Having no personal knowledge, I necessarily go to the gentlemen who come from that county, and who are acquainted with the business. And it would be presumptuous for me to argue that they do not need two Judges, not knowing anything about it. They should be permitted to judge of that. They are gentlemen who are entitled to the respect and confidence of this Convention, and their word should be respected when they say that two Judges are absolutely necessary. We are justified in giving them two Judges upon the information we have. Now, so far as San Francisco is concerned, I beg leave to enter my protest against the clamor which is raised against them. So far as my own experience is concerned, and it is not small, I say here to this Convention, that there is no better class of men, no more industrious, upright, honest, efficient set of officers, than the Judges of San Francisco. It is a vile slander to say that these Judges are gluttons and drunkards; that when the session is over, they immediately go to eating and drinking. From my personal knowledge of them, I know them to be painstaking, industrious, and honest. I say that, because it is due from me to say it, occupying the position I do on this committee. It is vile slander to attack men who have for years done their duty honestly and well. It is this kind of clamor against public officers which causes good men to shrink from holding office in this State. That is the reason why our best men do not care to become candidates for office. It is a poor reward for a man, when he has faithfully performed his duty, to be met with such clamor and slander. I say those men have worked honestly and faithfully.

MR. BARBOUR. I had reference to Judges all over the State, and not to those of San Francisco in particular.

MR. WILSON. I happen to have a personal acquaintance with most of the Judges of this State. I am personally acquainted with Judge Sepulveda of Los Angeles, Judge Keyser of Yuba, and they are above reproach. Judge Belden, of Santa Clara, is an upright, faithful Judge. Take the body of Judges in this State, and they rank as high in honesty and ability as any Judges of any State in the Union. We ought to be thankful that we have got as good a set of men on the bench. As far as San Francisco is concerned, I know that the Judges there work more than eight hours a day. Besides all this, we must look at the effect of an efficient system upon the morals of the State. If the criminal knows that he will be taken up, indicted, and tried without delay, it will have a marked influence in restraining him from committing crime; but you let a case drag along for a year, as is often the case when the calendar is behind, the witnesses scatter away, and there is not much chance of punishment. Criminals know this, and are willing to take the chances. This new system will be worth ten times what it will cost, if it will provide that a man may be tried, and convicted or acquitted, immediately. It is the worst kind of economy to deny to any community, swift and speedy justice, because it costs a few dollars more. We must not forget that this State has grown, and will continue to grow, and that our system of jurisprudence must expand and increase with the growth of the State. I hope that this amendment may be adopted.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: This is but the beginning of a conflict that will wage for years in the Legislature, if the present system of paying the Judges out of the State treasury is not changed. Every delegate in the Legislature will try to have another Judge added for his county, or will try to have the grade and salary raised, and there will be no end to it. Whether there is a necessity for these extra Judges or not, I do not pretend to say. I presume these gentlemen are honest, but it only determines it between this and the time the Legislature meets. They will have power to determine then. I think we had better leave the matter to the Legislature.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Santa Clara, Mr. McComas.

Carried.

MR. HITCHCOCK. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add, in line sixteen, after 'Sacramento,' the words, 'San Joaquin.'"

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I have been requested to make a statement in regard to San Joaquin County. I am convinced from the knowledge I have, and statements I have heard, that no proper administration of justice can be had in the County of San Joaquin without there being two Superior Court Judges. I am satisfied that two Courts are necessary to do the business. There is about an average of one hundred and thirty cases on the District Court calendar for that county. There is an average of twenty to thirty indictments every term to be tried by the County Court. There is a large amount of probate business always on hand to be transacted. I have been informed by those who know, that it is utterly impossible for one Judge to transact the business of that county. I have further been informed that Court has been held there three hundred different days in the year, and I undertake to say that no Judge can properly perform the duties of that office under this state of facts. I do not believe that a Judge can properly perform the duties of his office and hold Court three hundred days out of the year. I do not believe that the Judge ought to be in Court more than half his time. He must examine the cases presented before him in his Chambers. In order to do that he must have more time than we have given him. San Joaquin County has about thirty-three thousand people—equal to Sonoma, Santa Clara, or Los Angeles, or very nearly so. The amount of taxable property is also more than in Los Angeles. It is set down for eighteen hundred and seventy-seven as being seventeen million three hundred and seventy-six thousand dollars. The same year Los Angeles was set down for fifteen million dollars; Sonoma for seventeen million dollars. It will thus be seen that San Joaquin is of as much importance as either of the other three counties which have been allowed an additional Judge. The entire bar, with one exception, are in favor of it.

REMARKS OF MR. HITCHCOCK.

MR. HITCHCOCK. Mr. President: I am no lawyer, and have but a slight knowledge of the law. I offered that amendment after consulting with the District Judge and the County Judge, and a large portion of the bar of San Joaquin County. I find that they are all unanimous in the opinion that it is absolutely necessary to have two Judges. It was shown by Judge Hall, when this matter was up before, that it would be utterly impossible for one Judge to do the work. I do not expect to have any cases in Court. I never had but one in Court. But there are cases to be tried and we must have Judges to try them. We are perfectly willing to pay for own Judges if you will allow us the privilege.

REMARKS OF MR. HALL.

MR. HALL. Mr. President: When this matter was up before the Committee of the Whole it was fully discussed. I myself offered an amendment of this kind. I took occasion to submit to the committee the reasons why it should be adopted. Sonoma County has been awarded two Judges, and if the business and population of that county warrants it, certainly San Joaquin, for the same reasons, is entitled to two Judges. I called attention before to the statistics furnished by the County Clerk of that county, and it is not necessary to read them again. I am not able to make a comparison of calendars with the other counties that have claimed two Judges, but I am satisfied that such comparison, if made, would be favorable to San Joaquin. I know that it will be utterly impossible for one Judge to perform all the duties of the office in that county. I am aware that Judge Terry takes the opposite view, but he is alone in his position. I do not believe that any other delegate, be he lawyer or layman, will agree with him.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. President: I did not intend to say anything, being as I did not belong to the bar. But I consider my vote tells as much on the treasury of this State as though I did. Now, take the average number of days in Court at two hundred. The average amount of hours five. That would make it five dollars per hour for these gentlemen to sit in Court. I believe they ought to perform eight hours work a day, the same as other employés of the State.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Shoemaker, Howard, Stedman, and Hitchcock.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Joaquin, Mr. Hitchcock.

The ayes and noes were demanded by Messrs. White, Wyatt, Joyce, Tuttle, and Freeman.

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The roll was called, and the amendment adopted by the following vote:

AYES.

Beerstecher,	Hilborn,	Schell,
Belcher,	Hitchcock,	Schomp,
Biggs,	Holmes,	Shafter,
Boggs,	Howard, of Los Angeles,	Shoemaker,
Boucher,	Howard, of Mariposa,	Shurtleff,
Brown,	Huestis,	Smith, of 4th District,
Burt,	Hughey,	Soule,
Campbell,	Jones,	Stedman,
Casserly,	Kelley,	Steele,
Chapman,	Keyes,	Stevenson,
Charles,	Larkin,	Sweasey,
Cowden,	Mansfield,	Swing,
Cross,	McComas,	Thompson,
Dowling,	McCoy,	Townsend,
Doyle,	McNutt,	Tully,
Dudley, of Solano,	Mills,	Van Voorhies,
Dunlap,	Moreland,	Walker, of Tuolumne,
Eagon,	Morse,	Waters,
Estey,	Nason,	Weller,
Freud,	Neunaber,	Wellin,
Garvey,	Porter,	West,
Graves,	Pulliam,	Wilson, of Tehama,
Hale,	Reed,	Wilson, of 1st District,
Hall,	Reynolds,	Wyatt,
Harvey,	Rhodes,	Mr. President—77.
Herold,	Rolfe,	

NOES.

Barbour,	Hunter,	Noel,
Bell,	Inman,	O'Sullivan,
Condon,	Joyce,	Ringgold,
Davis,	Kenny,	Smith, of San Francisco,
Filcher,	Lavigne,	Swenson,
Freeman,	Lindow,	Tinnin,
Gorman,	McCallum,	Tuttle,
Grace,	Moffat,	Vacquerel,
Harrison,	Nelson,	White—28.
Heiskell,		

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole as amended.

Concurred in.

CHANGE OF JUDGES.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section eight.

THE SECRETARY read:

"SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof; and upon the request of the Governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Concurred in.

JUSTICES OF THE PEACE.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section eleven.

THE SECRETARY read:

"SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; provided, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

The amendment was concurred in.

OTHER JUDICIAL OFFICERS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section fourteen.

THE SECRETARY read:

"SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation, which compensation shall not be increased or diminished during the term for which they shall have been elected. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law."

MR. HALE. Mr. President: Before that is passed I wish to make a suggestion. We propose to submit this Constitution to the people in May. We propose to hold an election in November, after the Constitution is adopted. Now, this section says the Legislature shall provide for the election of Clerks, etc. Now, this election must take place before the meeting of the Legislature, which is to provide for their election.

MR. WILSON, of First District. I take it for granted that the schedule will provide against that, so that the old officers shall hold until the Legislature meets.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Concurred in.

NOTICE OF RECONSIDERATION.

MR. BELCHER. Mr. President: Section six, as amended by the Committee of the Whole, has been adopted. I am in favor of it, but my colleague, Mr. Ohleyer, is opposed to it. Therefore, in order to give him an opportunity to urge his objections to it, I send up the following notice:

THE SECRETARY read:

"I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention agreed to and adopted section six, as amended."

SALARIES OF JUDGES.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section seventeen.

THE SECRETARY read:

"SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of thirty-five hundred dollars each, payable quarterly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, which shall receive four thousand five hundred dollars each."

MR. CROSS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert in line eleven, after 'Sacramento,' the word 'Nevada.'"

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: A few words will explain this matter. Nevada County, according to the last census, had nineteen thousand one hundred and thirty-four people, and according to the best information, in eighteen hundred and seventy-seven, she had twenty-three thousand people. Now, sir, our county is provided with but one Judge, while San Joaquin County, with a population of twenty-one thousand, at the last census—perhaps twenty-six thousand now—has two Judges. Santa Clara, with a population at the last census of twenty-six thousand, is entitled to two Judges. Sonoma, with a present population of thirty-three thousand, has two Judges, and all of these Judges are to receive a salary of four thousand five hundred dollars, while Nevada County, with a population almost as large, has but one Judge, with a salary of three thousand five hundred dollars. It is a notorious fact that there is more litigation in the mining than in the agricultural counties. The cost of living in the mining regions is much greater than in any other portion of the State. For these reasons it seems to me that Nevada County should at least be entitled to a Judge of the first class. Unless the salary is increased we shall not be able to get competent men for the position. The Judge there will have as much work to do as both the Judges of these other counties. I hope that these facts will be taken into consideration by the Convention, and that Nevada County will receive what she is justly entitled to.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I am at a loss to know how to vote upon this amendment. I do not see that there is any reason why Nevada should not have a Judge of the first class. But it ought not to stop there. Here we have proceeded to give two Judges to Alameda, Santa Clara, San Joaquin, Sonoma, Los Angeles, and Sacramento, and yet I hardly need to say that there will not be as much work upon each one of those Judges as will devolve upon the Judge of Nevada County. The railroad runs through these counties, and in addition to the regular business, there is the business incident upon the railroads running through there. The business will be just as laborious, and require just as much competency, as these counties that have been given two Judges, with one thousand dollars a year more salary. There is no reason why they should receive more salary. I think the classification wrong anyway. I think there ought to have been three classes. There should be a salary in these important counties that will demand first-class talent, and the Judges should receive as much as the Judges of Alameda or Sonoma. If the gentleman will modify his amendment so as to cover Placer County, I will vote for it.

MR. CROSS. Let each county go on its own hook.

MR. HALE. We cannot dispose of it in that way.

MR. TINNIN. Mr. President: I am opposed to the amendment. I have an amendment to offer. Insert after the word "treasury" the words, "sum of three thousand dollars." That, I think, is fair and proper. I shall offer it when I have a chance.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Nevada, Mr. Cross.

The ayes and noes were demanded by Messrs. White, Sweasey, Tuttle, Heiskell, and Walker of Tuolumne.

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The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Freud,	Morse,
Barbour,	Garvey,	Nelson,
Barry,	Gorman,	Neunaber,
Beerstecher,	Grace,	O'Sullivan,
Belcher,	Graves,	Porter,
Bell,	Hale,	Pulliam,
Biggs,	Hall,	Reynolds,
Boggs,	Harrison,	Schell,
Boucher,	Herold,	Schomp,
Burt,	Hitchcock,	Shoemaker,
Caples,	Hughey,	Shurtleff,
Casserly,	Jones,	Smith, of San Francisco,
Chapman,	Kelley,	Soule,
Charles,	Kenny,	Steele,
Condon,	Lavigne,	Stevenson,
Cowden,	Lindow,	Swenson,
Cross,	Mansfield,	Tully,
Davis,	McComas,	Turner,
Dean,	McCoy,	Waters,
Dowling,	McNutt,	Weller,
Doyle,	Mills,	Wellin,
Eagon,	Moffat,	Wilson, of 1st District,
Estey,	Moreland,	Mr. President—69.

NOES.

Ayers,	Huestis,	Stedman,
Barton,	Hunter,	Sweasey,
Brown,	Inman,	Thompson,
Campbell,	Joyce,	Tinnin,
Dudley, of Solano,	Keyes,	Townsend,
Evey,	Larkin,	Tuttle,
Filcher,	Larue,	Vacquerel,
Freeman,	McCallum,	Van Voorhies,
Harvey,	Nason,	Walker, of Tuolumne,
Heiskell,	Noel,	West,
Hilborn,	Reed,	White,
Holmes,	Rhodes,	Wilson, of Tehama,
Howard, of Los Angeles,	Ringgold,	Wyatt—41.
Howard, of Mariposa,	Smith, of 4th District,	

MR. STEDMAN. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section seventeen, by striking out all after the word 'elected,' in the fifth line, and inserting as follows: 'During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be five thousand dollars each. The Superior Judges shall be divided into four classes. Those of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, Nevada, and Sonoma, shall constitute the first class, and shall receive an annual salary of four thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Placer, Santa Cruz, Solano, Tulare, Kern, Yolo, Yuba and Sutter jointly, San Bernardino, and San Diego, shall constitute the second class, and shall receive an annual salary of three thousand five hundred dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, Lake, Marin, Merced, Plumas, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Tehama, Tuolumne, and Ventura, shall constitute the third class, and receive an annual salary of three thousand dollars each, payable quarterly; and those of all other counties of the State, not above enumerated, shall constitute the fourth class, and shall receive an annual salary of two thousand dollars each, payable quarterly."

MR. WATERS. I raise the point of order that, by the last vote taken, we resolved that the Superior Judge of Nevada County should receive four thousand five hundred dollars a year, and now the gentleman proposes to cut it down to four thousand dollars.

THE PRESIDENT. The point of order is not well taken.

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. President: By the report of the Committee of the Whole, as amended, the State will have sixty-seven Superior Judges. Twenty-five of them will receive a salary of four thousand five hundred dollars, and the balance three thousand five hundred dollars. Then the twelve Judges of San Francisco will receive a salary of six thousand dollars each. Then, sir, the total expense per annum involved in this system is three hundred and twenty-six thousand dollars. Now, the amendment I propose will decrease this amount forty-four thousand dollars a year, and upon that the members of this Convention will be called on to vote. I find, in looking over the Codes, that under the present system we have five Supreme Judges, at a salary of six thousand dollars—thirty thousand dollars. We have twenty-three District Judges, at a salary of six thousand dollars a year—one hundred and thirty-eight thousand dollars; making a total that is paid out of the State treasury of one hundred and sixty-eight thousand dollars. Now, then, the gentleman proposes to pay out three hundred and twenty-seven thousand dollars out of the State treasury against one hundred and sixty-eight thousand dollars, as at present—an increase of one hundred and fifty-nine thousand dollars. We find, also, in considering the salaries paid to the other Courts of the State, that the total expense involved in the present system is two hundred and forty-eight thousand and eight hundred dollars. Now, gentlemen desire to increase the cost seventy thousand two hundred dollars a year. I don't believe that it is necessary in order to secure a correct administration of justice. I don't believe this Convention was called for that purpose.

ADJOURNMENT.

MR. SHOEMAKER. Mr. President: I move we do now adjourn.

Carried.

And, at four o'clock and fifty-five minutes P. M., the Convention stood adjourned until to-morrow, at nine o'clock and thirty minutes A. M.

ONE HUNDRED AND THIRTY-EIGHTH DAY.

SACRAMENTO, Wednesday, February 12th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barbour,	Grace,	O'Donnell,
Barnes,	Gregg,	Overton,
Berry,	Herrington,	Prouty,
Blackmer,	Johnson,	Reddy,
Dudley, of San Joaquin,	Lampson,	Stuart,
Farrell,	Martin, of Santa Cruz,	Terry,
Fawcett,	McConnell,	Walker, of Marin,
Finney,	Miller,	Webster.
Glascock,	Murphy,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Mr. Stuart.

Three days leave of absence was granted Mr. Lampson.

THE JOURNAL.

MR. LINDOW. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

REPORT.

Mr. Ayers, from Committee on Reporting and Printing, reported as correctly engrossed: Amendment five hundred and one, legislative department; amendment number five hundred and twenty-six, future amendments.

JUDICIAL DEPARTMENT.

THE PRESIDENT. The Convention will resume the consideration of report of the Committee of the Whole, on the article on judicial department. The Secretary will read the amendment to section seventeen, proposed by the gentleman from San Francisco, Mr. Stedman.

THE SECRETARY read:

"Amend section seventeen by striking out all after the word 'elected' in the fifth line and inserting as follows: 'During the term of the first

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Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be five thousand dollars each. The Superior Judges shall be divided into four classes. Those of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, Nevada, and Sonoma, shall constitute the first class, and shall receive an annual salary of four thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Montery, Napa, Placer, Santa Cruz, Solano, Tulare, Kern, Yolo, Yuba and Sutter jointly, and San Bernardino and San Diego, shall constitute the second class, and shall receive an annual salary of three thousand five hundred dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, Lake, Marin, Merced, Plumas, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Tehama, Tuolumne, and Ventura, shall constitute the third class, and shall receive an annual salary of three thousand dollars each, payable quarterly; and those of all other counties not above enumerated shall constitute the fourth class, and receive an annual salary of two thousand dollars each, payable quarterly.'"

REMARKS OF MR. HEISKELL.

MR. HEISKELL. Mr. President: That amendment should not pass. It is so manifestly unjust, and so loosely thrown together anyway, that it should not be adopted. In classifying the various counties in the first class, to which they give a salary of four thousand dollars, are some counties that pay less revenue on the assessed value of their property than some four or five other counties which are in the second class and in the third class. Take the County of Kern. Their property is assessed at a little over five million dollars, while it is in the first class. There are the Counties of Placer, Merced, and Stanislaus, some of which have nearly as much, and others more property than the County of Kern, and they are put in the third class, with a salary of three thousand dollars. They all have a large voting population, and the treasury has a good fund contributed by the various counties of the State, and whilst I am not in favor of high salaries, I think the counties that pay the most taxes, when there is any portion of it to be returned in the way of salaries, should receive their just proportion. I hope that the amendment will not be adopted.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I think we had better vote down this amendment, in the hope of settling the proposition which properly precedes it, and which, if once settled, I think we will have no further trouble about this matter of salaries of the Judges, or the number of the Judges. I presume, from what I have heard since the adjournment yesterday, that the Convention will solve this question in the only way it can be solved, and that will be by providing that the State shall pay a portion of these salaries, and the counties pay the balance. If that rule shall be established, and it shall be established equitably, there will be no further trouble or demand for higher salaries in some counties than provided in the article on the judiciary, and there will be no further trouble with reference to the number of Judges, because in such case it brings the matter directly home to the people themselves, and their representatives are to speak for them; and for my part, in that case, I should be disposed to let every delegation speak for itself, as to what they deemed proper salaries for their Judges. It has been suggested here that the counties should pay the Superior Judges. That has been voted down, and I am not one of those delegates who propose to occupy any time in discussing that which has passed and not likely to be changed. We may regard some things as settled. One is, that the Constitutional Convention will here fix the salaries, and the Legislature may hereafter reduce; at any rate, that it will be for the State, and not for the counties, to fix the salaries. It was shown here in figures in detail that this judicial system will require the payment, out of the State treasury, of the difference between about one hundred and fifty thousand dollars and three hundred and twenty-five thousand dollars, or an additional expenditure from the State treasury of one hundred and seventy-five thousand dollars per annum. I venture to say, that if we adopt such a provision as that, we would either have to defeat the whole article, or the article would defeat the Constitution, in all probability. It would furnish the enemies of our work an argument which, before the people, would be unanswerable. I propose to offer an amendment to prevent the other idea. It was proposed that the State should pay two thousand dollars. I say that would be unjust to the large counties. I think the State should pay one half of the salary of each Superior Court Judge, and the county pay the other half; that will be just and equitable in every respect. These Superior Courts take the place of the County Courts and the District Courts. Heretofore the County Judges were paid by the counties and the District Judges were paid by the State. It carries out the same idea, that, as they take the place of both, the State and county should divide in paying the Judges substituted for both. Delegates will not ask too much where their own counties have to pay half of it. I respectfully submit to the Convention, that we had better vote down every proposition until we fix the theory upon which these salaries are to be paid.

MR. STEDMAN. Mr. President: I desire to offer a proposition in place of the one I offered last evening. I think it will be satisfactory to the Convention.

MR. MCCALLUM. Is the proposition withdrawn?

MR. STEDMAN. I think it would satisfy the gentleman on the floor——

MR. MCCALLUM. I suppose it is the same proposition that I have offered heretofore. It is a proposition that the State shall pay two thousand dollars.

MR. STEDMAN. No, sir; that is not it.

MR. MCCALLUM. Read it for information.

THE SECRETARY read:

"During the term of the first Judges elected under this Constitution, the annual salaries of the Judges of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into three classes, thus: The counties containing thirty thousand inhabitants and upwards——"

MR. MCCALLUM (interrupting). That seems to be upon a different subject. That has no bearing on the fixing of salaries whatever. The question solely presented in the proposition I am arguing is, that we should fix how the salaries are to be paid, and if the gentleman will withdraw his amendment until we settle that proposition, then let the question of salaries come up.

MR. STEDMAN. If the gentleman would have listened to the proposition——

MR. MCCALLUM. It confounds one thing with the other, which ought not to be mixed up with it at all. Fix first how they shall be paid, and then we shall have no difficulty.

MR. STEDMAN. This provides that the State shall pay one half.

MR. MCCALLUM. This is my proposition: In line three strike out the words, "from the State treasury;" in line five, after the word "elected," insert, "the salaries of the Justices of the Supreme Court shall be paid by the State; one half of the salary of each of the Superior Court Judges shall be paid by the State; the other half thereof shall be paid by the county for which he is elected."

MR. STEDMAN. Would it be in order for me to change my amendment?

THE PRESIDENT. Objection has been made.

MR. TINNIN. I do not think any of the propositions are just what is wanted, and I propose, when an opportunity presents itself, to offer the following amendment: "Strike out all after the word 'each,' in the seventh line, and insert: 'Until otherwise changed by the Legislature, Judges of the Superior Courts shall receive an annual salary of two thousand dollars, payable quarterly, out of the State treasury. The Supervisors of any county may increase the salary of the Judges of the Superior Courts to an amount not exceeding six thousand dollars per annum, which increase shall be paid out of the county treasury.'" I think that would properly settle this question. I do not propose to interfere with the Judges of the Supreme Court. If an opportunity presents itself I desire to offer that amendment.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: There is evidently a difficulty here in determining how much these Superior Court Judges shall be paid. Now, sir, the amendment before the house is wrong in several particulars. In my judgment four thousand dollars is not enough for a Judge. I believe that in many of the important counties of this State, where the Judges should be good lawyers and men of learning, they ought to receive more than four thousand dollars. I know that there are some counties that this amendment has placed in the second class that should be in the first class. For instance, in this first class you have Sonoma County, with two Judges, both receiving the highest salary provided for in this Constitution. Now, there are other counties here that have nearly as much population, nearly as much wealth, if not quite as much, placed in the second class. Take the County of Butte, for instance, with a population of twenty thousand and more, with an assessment roll of twelve million of dollars or more, in the second class; and yet Sonoma County with but little more than that has two Judges in the first class. This is wrong manifestly. I believe one Judge is sufficient for Butte County, though I attended a term of Court there last week and found nearly one hundred cases upon the calendar. One Judge can do the business; but one Judge must work well to do the business there. Whatever Judge there is there should be paid as much as any Judge in the State is paid in the Superior Court. Again, the two counties of Yuba and Sutter have been put together because one Judge may do the business, and for the purpose of allowing that one Judge to be paid as much as any Judge, and yet they are put in the second class. Colusa County is another county where a Judge must work hard, and which ought to be in the first class. I object to the amendment before this Convention, because it is radically wrong in many respects. How this is to be solved is the question. So far as I yet see the proposition suggested by Mr. Tinnin is the better one, that after receiving such an amount from the State treasury each Judge be paid a certain amount by the county. I should have preferred to have it two thousand five hundred dollars; but when each Judge is paid from the State treasury two thousand dollars the counties may pay as much more as they please, not exceeding six thousand dollars. This will solve the difficulty, and enable each county to pay the Judge such sum as they think its Judge ought to have. In the small counties very little more would be paid. Take Alpine or Modoc; they cannot afford to pay but little more if any, but the wealthier counties can pay, and ought to pay, as much as five thousand to their Judges. Now, I believe that this will solve the whole question. Take Santa Clara a large and wealthy county that wants two Judges. They get two thousand dollars apiece for them from the State. If they want to pay their Judges six thousand dollars they can do it. If they think their Judges can work for three thousand dollars let them work for that, but let them settle the question for themselves, and then there will be no cause for complaint. I have had considerable experience as a lawyer, and I believe that there are many counties in this State where the Judge may do the business of two counties. You cannot do this unless the Judge can pass readily from one to the other, but there is an intention here to increase the number of Judges, perhaps, from the fact that the State was supposed to be called upon to pay the whole bill. I am in favor of this last proposition, although I would have it changed to two thousand five hundred dollars. I am opposed to the one now before us, and I think the Convention ought to vote it down.

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REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I am astonished that the gentleman from Yuba should go for paying Judges by the counties. I cannot conceive of any system better calculated to make a man both a knave and a slave. If you give him two thousand dollars out of the State treasury let that be the whole salary, but do not induce him to humble himself by begging a salary before the Supervisors of the county. Nothing could be worse; nothing could be more humiliating; nothing could be more corrupting or debasing. The Superior Judges are State officers as much as the Judges of the Supreme Court, and should be paid from the State treasury, and paid exclusively from the State treasury. I cannot conceive of anything possibly worse than to have a Judge with his hat in his hand, begging the Supervisors for an additional or increased salary. If you want to destroy the judicial system do that. Now, sir, there is but one method of disposing of this matter practically, in my opinion, and that is to adhere to the report of the Judiciary Committee, which is nearly seven thousand dollars less in expense than the report of the Committee of the Whole. Gentlemen talk about expense. The people of this country want an independent, honest judiciary, and are willing to pay what it costs. Before the assembling of this Convention I never heard a single voter complain of what the judiciary cost, or complain of the present salaries, which is all the committee provides for. They were anxious for more expeditious administration of justice; they were anxious to avoid the law's delay; they want to pass it in independence; but they never, to my knowledge, proposed any picayune idea as that justice was to be measured out as you sell beer at a saloon. It is a mistake, sir, and those who address themselves to this miserable economy, with the expectation of its being a matter of popularity, will find themselves mistaken. I know something of the people, and I know that they have sense enough to know that they want to have an honorable administration of justice, and that they are willing to pay for it. It is a mistake for any gentleman to suppose that he can recommend himself to popular favor by destroying the judiciary of his country; they will find themselves mistaken. The people want independence; they want honesty; they want capacity, and they are willing to pay what it costs. They are willing to give a fair day's wages for a fair day's work. That is the popular sentiment of this country; and those are mistaken who suppose anything else will go down with the people. If you debase your judiciary, take my word for it, this Constitution goes under. If you desire the Constitution to be adopted, this is the worst possible policy you could adopt.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: Probably the strongest argument in favor of fixing by law permanently in this Constitution the salary of Judges, is exemplified on this floor this morning. During the discussion on the reports on legislative department and matters of revenue, this Convention has been conspicuous by the absence of some of its most distinguished members, but when the question of the salary of the Judges comes up we find some distinguished members in their seats whose absence for the last thirty days has been conspicuous. I do not desire to reflect upon these gentlemen. I have seen a lobby about these legislative halls, and the most disgraceful lobby that ever assembled was when Judges came here to have their salaries raised, haunting members, following them to their rooms and begging an increase in their salaries. Now we should avoid this. We should establish some uniformity. This is the only gap that has been left in this Constitution so far that will allow a lobby. Now we should fix a uniform rate that the State shall pay to a Judge, and it is not proposed that any Judge shall walk into the Treasurer's office and receive his money, in many instances ten times what it is worth. It is paid by the taxpayers of the county where he lives. He receives a portion of his salary from the State. All the money that you can pile upon some men would not make them pure. There are men that millions would not make fit to sit upon the bench. I am willing to pay such a price as is right and just. I believe that at least in twenty of the counties of this State, if you will go and examine the records you will find that their County Courts have not set one hundred days in the year. One way to take this question out of the Legislature, and keep these men from hanging around here and disgracing their positions, is to provide that two thousand or two thousand five hundred dollars shall be paid by the State, and let the counties pay the balance. There are many counties in the State that the best talent in it is not worth two thousand dollars a year for any position, and we do not want carpet-baggers. We have got to take the material we have got to make Judges of. We do not propose to import them from San Francisco, Louisiana, or Maine. The people of California have never been niggardly in their salaries. There are two sides to this question, and the taxpayer has a right to say that the salary shall not be increased. One of the main ideas of changing the judicial system was to simplify it, to make it more economical, to have our Courts always in session, so that causes may be tried. You have provided for that, but you have provided for a system that will make lobbying and log-rolling. To avoid all this let us provide for the payment of a certain sum by the State, and leave the rest to the counties. This lobbying element must be wiped out in some form or it will disgrace the Constitutional Convention, and it will disgrace the judiciary of this State in the future.

MR. WELLIN. Mr. President: I hope that the Convention will allow Mr. Stedman to present his substitute, as I believe that it embraces all that this Convention is seeking for. First, it provides that the Judges shall be classified by the population of the different counties; second, it provides for a division of the salaries between the county and the State, leaving it with the county to have whatever it pleases. It also provides for an increase of the salaries by the county, if the county desires it; therefore it leaves it more with the people than it has been heretofore in any proposition. I believe it has been the custom to allow other gentlemen to change, amend, and modify their own propositions; I hope that the Convention will allow Mr. Stedman to present his amended section, and then, if they do not desire it, they can as readily vote it down.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: In the first place, in regard to what the gentleman from Los Angeles has just said, as a criticism why the salary should not be paid in part by the State and in part by the counties, if he will reflect a moment he will see there is nothing in it, because the salaries cannot be increased or diminished after the election; therefore, a Judge will not go, with his hat in his hand, begging the Supervisors to increase his salary. If the Constitution is adopted as it reads, he will have no power to have his salary increased after his election.

MR. HOWARD. He cannot get any additional salary from the county unless the Supervisors of the county make the appropriation.

MR. HAGER. They will have to do it in advance. But when he goes before the people as a candidate for office, he knows exactly what his salary will be. He need not take the office if the compensation is not satisfactory.

MR. HOWARD. He takes the office with the expectation of getting more pay.

MR. HAGER. He cannot do it. Look at the County Judges now, they cannot do it, yet they receive their salary from the county.

MR. CROSS. Does not the Legislature fix the salary of the County Judges?

MR. HAGER. Yes, I believe it does. They may say it shall not exceed a certain amount, but that is immaterial. Now, I would suggest another proposition entirely. I would not undertake to classify counties by name, I would classify counties by population; and in all the Constitutions of the most modern dates, you will find that the Judges are classified according to the population, and not according to counties. For instance, there may be a Judge for every twenty thousand or thirty thousand inhabitants. Suppose one county contained thirty thousand, let them have a Judge.

MR. MCCALLUM. What census do you go upon, eighteen hundred and seventy?

MR. HAGER. I am not talking about details. We have decennial census—a United States census every ten years. I am not talking about how we shall arrange it in this Constitution for the first set of officers elected under it, but I am talking about the future. After the census of eighteen hundred and eighty, I would say that the Legislature should classify these counties according to population as ascertained, and that one Judge might be elected for every twenty thousand or thirty thousand inhabitants. Then you would have a rule that would work justly.

Now, why should not the compensation be divided between the State and the county, as it has been heretofore. The burden has always been upon the county to pay the County Judges, and the District Judges have been paid by the State, now the two are consolidated into one, and why should not the counties pay a portion of it. These salaries should be adequate, and it should be taken into consideration that the Judge is prohibited from doing any other business, following his profession, or otherwise. I do not know why a Judge in a small county should not be compensated in proportion to what he would obtain in a large county. The compensation should be proportionate to the services, and should be sufficient to support a man and his family according to what his necessities of life may require.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from San Francisco, Mr. Stedman.

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

Seconded by Messrs. Wellin, Howard of Los Angeles, Swenson, and Wyatt.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Herold,	Sweasey,
Beerstecher,	Joyce,	Swenson,
Bell,	Kenny,	Thompson,
Condon,	Rolfe,	Wellin,
Dowling,	Smith, of San Francisco,	West,
Evey,	Stedman,	Wyatt—19.
Harrison,		

NOES.

Andrews,	Estey,	Laine,
Barry,	Filcher,	Larkin,
Barton,	Freeman,	Larue,
Belcher,	Freud,	Lavigne,
Biggs,	Garvey,	Lewis,
Boggs,	Gorman,	Lindow,
Boucher,	Graves,	Mansfield,
Brown,	Hager,	Martin, of Alameda,
Burt,	Hale,	McCallum,
Campbell,	Hall,	McComas,
Caples,	Harvey,	McCoy,
Casserly,	Heiskell,	McFarland,
Chapman,	Hilborn,	McNutt,
Charles,	Hitchcock,	Mills,
Cowden,	Holmes,	Moffat,
Cross,	Howard, of Los Angeles,	Moreland,
Crouch,	Howard, of Mariposa,	Morse,
Davis,	Huestis,	Nason,
Dean,	Hughey,	Nelson,
Doyle,	Hunter,	Neunaber,
Dudley, of Solano,	Inman,	Noel,
Dunlap,	Jones,	Ohleyer,
Eagon,	Kelley,	O'Sullivan,
Edgerton,	Keyes,	Porter,
Estee,	Kleine,	Reed,

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Reynolds,	Steele,	Walker, of Tuolumne,
Rhodes,	Stevenson,	Waters,
Ringgold,	Swing,	Weller,
Schell,	Tinnin,	Wickes,
Schomp,	Tully,	White,
Shafter,	Turner,	Wilson, of Tehama,
Shurtleff,	Tuttle,	Wilson, of 1st District,
Smith, of Santa Clara,	Vacquerel,	Winans,
Smith, of 4th District,	Van Dyke,	Mr. President—104.
Soule,	Van Voorhies,	

MR. CAMPBELL. Mr. President: I send up a substitute.

THE SECRETARY read:

"SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into four classes: Those of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, Yuba and Sutter combined, and Sonoma, shall constitute the first class, and shall each receive, during the first term, an annual salary of five thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer, Santa Cruz, Solano, Tulare, Yolo, Kern, and San Bernardino, shall constitute the second class, and shall receive, during the first term, an annual salary of four thousand dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Tehama, Tuolumne, and Ventura, shall constitute the third class, and receive during the first term, an annual salary of three thousand dollars each, payable quarterly; and those of all other counties of the State, not above enumerated, shall constitute the fourth class, and receive, during the first term, an annual salary of two thousand dollars each, payable quarterly. One half of the salaries of the Judges of the Superior Courts, shall be paid by the State, and the other half by the respective counties.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: It would be observed that this amendment follows the classification and adopts the salaries as provided for originally in the report of the Judiciary Committee, with the single exception that the Counties of Yuba and Sutter, which have since been placed together, and have one Judge combined, are placed in the first class, which would affect the report in the aggregate about two thousand dollars. Now, I do not believe that the people of this State will make any objection to a reasonable increase in the amount of money paid for the judicial department, for this reason: we all know that the present judicial department is entirely inadequate to the wants and requirements of the State. In the system we have adopted here, we have brought justice to the door of every man; we have provided each county with a Judge; we have provided for a Supreme Court, sitting in departments for the greater dispatch of business, and in point of fact, under the system as we have made it now, although nominally there will be an increase of expenses to some extent in the salaries of Judges, yet the saving in point of time, the saving to litigants, in not permitting their cases to drag along year after year, or month after month, will far more than compensate for the additional expense. So that the judicial system as now proposed, with that rate of salaries, will be infinitely cheaper to the people of the State than the present system. That classification, of course, is not perfect. It is really impossible to make it so. You can not make any classification, either based on population or anything else, which can do exact justice to every man in the State. All we can do is to do as we do in all other human affairs, approximate as nearly to the right as we can. Now that section, as originally proposed, was considered carefully in the Judiciary Committee. I changed it to meet what appears to be the sentiment of the Convention; that the payment of the salary should be divided between the State and the respective counties, so that so far as the State is concerned, there will be a decrease in the amount paid from the State treasury, but so far as the counties are concerned, there will necessarily be some increase. You cannot adopt a judicial system with sufficient working force to do the business of the State at the present cost of it in the amount of salaries paid to the Judges. You cannot adopt such a system and make it effectual. The best way to do is to adopt that system which will do speedy and exact justice; which will bring to the bench, so far as may be, men of character and position; which will retain good Judges and drive off bad ones. Such a judicial system is what the State wants. I think it is advisable to proceed with as much regard to economy as we can, still we must bear in mind that the administration of justice under the law is the highest and paramount consideration, and I hope that this amendment will meet with the favor of the Convention.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. President: So far as the amount of the salary is concerned, I would favor Judge Campbell's amendment, but as I had occasion to say in Committee of the Whole, when this question was up, I am opposed to putting any portion of this salary on the counties, for the reason I gave then. I believe it was so adopted and so understood by this body, that a great many of these counties are in debt and are not paying. I could name a number of them: Amador, Calaveras, Tuolumno, Alpine, and if I mistake not, El Dorado; these counties are largely in debt. The Judges would have to take their salary in scrip, and in some cases it would really amount to nothing if the county has to pay it. It seems to me that these are State Courts, and the State should pay for them. All of the State business is done in these Courts. I believe that the State should pay these salaries, and I concur with the gentleman from Los Angeles, General Howard, that we should not be niggardly in doing it. Nor do I believe that the people of this State require their Judges to act for salaries that are not commensurate with the services that they should render. In my own county, we have been particularly blessed with able, learned, honest, and efficient Judges; and my people, sir, I know would not, were they to take a vote to-day, lower the salary to less than five thousand dollars, which the District Judge gets to-day. In the matter of appeals alone we have saved the amount of this salary. There has not been one appeal from the County Court or one from the District Court. Now, do the people of that county wish to turn off such Judges as that and get cheap Judges? They would rather pay the present Judges ten thousand dollars than to do without their services. When we go into Court we know that we go before a Court that is learned and honest, and when we get a judgment the attorneys and their clients are all satisfied, and there is no necessity for any appeal. Now, sir, I hear gentlemen talk upon this floor, about decreasing the salaries of Judges, and making Judges go around begging of Supervisors. Let me say that no respectable Judge would do it, and these gentlemen I have alluded to I know would not take the office and ask for a part of their salary from the Board of Supervisors. I hope that the amendment of Judge Campbell will be adopted, modified in that way.

MR. TINNIN. Don't you know it is impossible for the Judge to go before the Board of Supervisors for an increase of his salary?

MR. EAGON. No bill can be paid by a Board of Supervisors unless there is a bill put in for it. The people do not want it, I know. I have had occasion, for the last three weeks, to be among the people of El Dorado and Calaveras counties, and I know that the sentiment is, that the salaries are low enough.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I hope that the amendment of Judge Campbell will be voted down. It ranges entirely too high. It ranges higher than the people want. I know that so far as my district goes, that they are not willing to pay it; and that they are very jealous of these salaries, and that they want them reduced to a reasonable figure. I favor the amendment of Mr. Tinnin. It leaves the counties to say how much these Judges shall have, and at the same time provides that every county shall have two thousand dollars from the public treasury towards getting a good Judge. Whatever they find necessary after that they can add to it. But, at all events, I am opposed to the amendment before the Convention, because it takes the salary up too high. It will cost seventy thousand dollars a year higher than the old system. The people were under the idea that we would reduce the expense of the judiciary. We find that impossible, but we can get it somewhere where it will not be too extravagant.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I hope the amendment offered by Judge Campbell will be voted down. I do not agree that the salary of the Superior Judges, even in the first-class counties, must of necessity be five thousand dollars in order that good talent and capable men may be obtained. Neither do I believe that the people demand a salary of five thousand dollars, as has been advanced on this floor. I contend that the attorneys—and I speak with all due regard for them—are not the proper persons to judge in this matter. Nor are the people with whom they associate, and with whom they do business, the proper persons to judge. Those with whom a lawyer ordinarily is brought into contact are the speculating class; the reckless class; they are not the conservative class, and do not represent the conservative element, or population, of the State. They are men that are gamblers by profession. They transact business of chance, and they rush into Courts in order that their chance schemes may win. They are reckless in their judgment, and in their opinions of what is right and wrong. In fixing these salaries, we must take into consideration the interests of the taxpaying masses, who are peaceable citizens; who do not rush into the Courts; who have but little to do with this class of men on this floor, who pretend to judge the popular sentiment of an element that they are not brought into contact with. I believe that two thirds of the better class of citizens have nothing to do with the attorneys or with the Courts.

MR. EAGON. Are not lawyers, as a general thing, drawn more in association with every class than any other class of men?

MR. WEST. No, sir.

MR. EAGON. I think they are. That has been my experience.

MR. WEST. They are necessarily educated by the business with which they are brought in contact. When you talk about fourteen dollars a day, it may seem very small to an attorney, but it is very large for the business men of this country, and for the laboring men of this State. Now, I do think that we should have some regard for the bone and sinew of the State, the real good portion of the State, who pay the taxes, and the men who do business on the streets. Their interests should be consulted, and this matter of Courts should be made useful and practical, as well as ornamental; and we should not be expected to pay for a mere matter of ornament. I shall not vote even for the article if it contains a salary more than four thousand dollars for any class of counties; and I hope that if the professional portion of this Convention forces the issue upon it, the conservative part of this body will vote down the article, rather than pay five thousand dollars a year for the services of men who would be glad to get thirty-five hundred dollars.

MR. CROSS. Then why don't you propose that Los Angeles shall be placed in the third class, instead of in the first class?

MR. WEST. We propose that Los Angeles shall stand in her proper place, according to her population, and her wealth, and her interests,

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at least I do not ask that we must have two five thousand dollar Judges there. I do not believe that the people of Los Angeles desire any such thing. I have heard the matter discussed, even among lawyers in Los Angeles, and they remarked that thirty-five hundred dollars was more than the average good attorney of Los Angeles County could make; and I believe it.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: The scale of salaries reported by the Committee on Judiciary and Judicial Department, and in the substitute, is for seven of the District Judges a positive reduction of one thousand dollars per annum. At present seven of the District Judges receive from the State treasury six thousand dollars per annum. That is the same compensation as the Supreme Judges. Now, sir, the District Judges in the City and County of San Francisco—and I speak for Alameda County—are entitled, in justice, to as much compensation as the Supreme Judges. They work as many hours in the day, and as many days in the year, as the Supreme Court Judges, and they are, upon the average, of as high a class in capacity and in every other respect, and ought to be so. Now, sir, this Convention has set down the compensation for Supreme Judges at six thousand dollars per annum. It is little enough, unless you want to embark upon a scheme here of cheap justice, which I do not think the people of this State are now prepared to embark in. Mr. President, I have not yet heard of any petition being presented to this body in favor of a reduction of judicial salaries. I have not heard of any public meetings in the State on the subject. We do not intend to raise them. I have not heard of any reputable paper of the State that favors a reduction of judicial salaries. Now, sir, I ask, where do these great reformers get their authority from when they say that this Convention was called for the purpose of reducing judicial salaries? I deny it. I affirm that the people of this State are satisfied with the present compensation of their Judges. The compensation of the Supreme Court Judges has been six thousand dollars for fifteen years. Have we had any clamor about it? Have we had the Legislature besought to reduce the salaries? Not at all. On the contrary, we had the salaries in some districts raised from five thousand dollars to six thousand dollars in compliance with the demand of the people of the State through their representatives in the Legislature. I deny that the people of the State have called upon us to enter upon a crusade here against a judiciary in the matter of reducing judicial salaries. As I said before, the report of the Judiciary Committee reduces the compensation of several of these Judges from six thousand dollars to five thousand dollars, and now it is proposed to go further and reduce these first class counties to four thousand dollars, making a difference between the Supreme Court Judges, and the Superior Judges in these large counties of two thousand dollars. It would be entirely out of proportion to pay the Supreme Judges six thousand dollars, and the Superior Judges of these first class counties only four thousand dollars. I think the schedule reported by the Committee on Judiciary is the fairest and the best. The scheme here proposed consolidates the District Judges and the County Judges of the State. Heretofore the District Judges being State Judges were paid out of the State treasury, and the County Judges were paid by the several counties. I think it is highly appropriate that inasmuch as we have consolidated these two classes of Judges, the compensation should be divided between the State and the county in the proportion proposed by the gentleman from Alameda, that is, to have the State pay one half of the compensation and the counties the other half. That would be about fair, and it would be about in the proportion that it is now. It is generally admitted, Mr. President, that the scheme proposed is infinitely superior in every respect to the old judicial system. Every lawyer with whom I have conversed, and every Judge has conceded that the scheme proposed is infinitely better than the old judicial system, and will result in the expedition of business and in the speedy decision of cases brought before the Courts, which is the great matter that concerns the people. They want litigation expeditiously determined. Now, an ordinary case getting into the Courts of San Francisco or Alameda counties is frequently not reached on the calendar for two years. There is a cry for relief. It concerns the litigants, and they are the people. It is not the legal profession nor the Judges. The judicial system is one that concerns the people. It comes home to every man in the State, and an honest working judiciary is one of the greatest benefits to any land. I hope the amendment proposed by the gentleman from Alameda will be adopted.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. President: We have come here with different habits, and every man seems obligated to do the best he can for his class. The grangers want growing crops exempt; the workingmen want the State Prison contracts done away with; the lawyers want extravagant salaries for the Judges; but it is self-evident to us all that the people want, if anything, a reduction in salaries. However, I believe that the temper of the Convention is such that a compromise should be received. I believe that Mr. Tinnin's amendment suggests such a compromise. It divides the responsibility of paying these Judges between the State and the counties. The State sets apart a certain fund for the purpose—two thousand dollars to each County Judge. Now, no County Judge in any county could receive less than two thousand dollars. Then the authorities of the county may superadd so much as they may think proper, according to the ability of their Judge and the services which he renders them. I think this is the best proposition. As to the classification scheme, I do not think that will work. I shall vote for Mr. Tinnin's amendment if it comes before the house.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: In many respects, I think the proposition offered by the gentleman from Alameda is the best and clearest that has yet come before the Convention; and yet, sir, it is deficient, or at least defective in the same particular that every proposition yet submitted before the Convention has been, and that is in this: that when more than one Judge is given to a county, they are entitled to receive the highest compensation allowed. I think that is wrong. For instance, the County of San Joaquin must have two Judges. Now, sir, while I admit that they may need two Judges, I do not believe that their work will be twice as heavy as the litigation of the County of Butte, for instance. Therefore, is there any good reason why, while having two Judges, they should also have a higher salary for these two Judges than is paid to a Judge in a county like Butte? I claim that the second Superior Judge in a county like Alameda will not have as much work to do as the Superior Judge of the County of Placer, and he should not receive any more salary. Is justice so much more dear in Alameda than in Placer, that the Judge should be paid a higher salary for a less amount of work? I say not. Placer County is set back in the second or third class, yet this one fact remains, that outside of some of the main centers of population there is not a county in the State that has as much and as provoking litigation as the County of Placer. I believe that four thousand dollars for a Superior Judge is all right. I think it is all they ought to receive, and if it can be shown why both the Judges in these double-headed Courts should have five thousand dollars, I would like to hear the reason for it. We are willing to give these counties all the Courts they need, but there is no good reason for also giving them an increased salary for their Judges, especially when the State is to pay a portion of it. Now, if you include these double-headed counties in the first class, also those in the second class in the first class, then put those in the third class in the second class, and those in the fourth class in the third class, you will have a proposition that I think will be satisfactory to the Convention, and I believe would be eminently satisfactory to the people. I hope that if this amendment should be voted down, that if I do not have an opportunity, some one else will look into the matter and offer a substitute to that effect, and that it will be adopted.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I am sorry to see so much inconsistency in this Convention. Now, we have been preaching economy ever since the Convention commenced. When we were discussing the report of the Committee on Education, the salary of the Superintendent of Schools was too high and had to be reduced; when we reached the article on Legislative Department, we reduced the salary because it was too expensive to the people. Now we have reached the Judicial Department and it is said that we must not reduce the salaries. If that is consistent I fail to see it. If we must economize for the people I do not see why we should economize in the branches of legislation and education and raise the wages in the judiciary. Now, sir, I hope that the amendment will not prevail and I shall vote against it.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. President: I merely wish to say that I protest against this reducing the salaries of Judges, particularly when counties only have one Judge. The county I represent here comes in the second class and has but one Judge, and I am convinced that we could not get a competent man to serve for less than four thousand dollars. We have a large lumber interest in that county and much litigation, many cases involving a great many thousand dollars. We are fortunate enough to have some eminent men, honest, upright, and learned in their profession. But it would not justify them to abandon their practice in the Courts to occupy a position as Judge for less than four thousand dollars, if it would for that. I think it would be a piece of niggardly economy to attempt to reduce the salaries any lower. We would be compelled to take shyster lawyers for our Judges, and they would have to be imported from some other part of the State, for we have none there. I shall have to vote for Mr. Campbell's amendment.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I would be in favor of the amendment of Judge Campbell in so far as it relates to salary, but I am opposed to it because it makes a Judge depend upon the Supervisors of the county for a portion of his salary.

MR. CAMPBELL. It provides that the county shall pay one half and fixes the salary.

MR. MCFARLAND. I am opposed to that then. I do not believe that a small county should be compelled to pay one half of the salary of the Judge. The Judge of the Court is a State officer. His Court is open to every person in the State, and there are a great many small counties; you will find that one half of the litigants in the Courts reside at other points in the State. You take the County of Mono, and I will venture to predict that in one half of the lawsuits that take place in the next five years, the clients upon one side or the other, and frequently both, live in San Francisco. It is not right to make the people of a small county pay half the salary of the Judge.

MR. CAMPBELL. Don't you pay the County Judge now?

MR. MCFARLAND. We are abandoning that system entirely. We are providing for one system of State Courts, of general jurisdiction, to extend all over the State. Of course it might do in San Francisco, or in Alameda, perhaps in the City of Sacramento, but I do not think it is fair or right to make these small counties pay for one half of the litigation that takes place there in the interest of a large county. If this amendment is voted down, I understand the proposition is going to be presented again, that the counties themselves shall determine the salary. Who determines then? The Board of Supervisors. Now, sir, from the expression of opinion that we have heard from a number of members on this floor, the very class of men who will be likely to be elected Supervisors of counties, we can see what the salaries of Judges is likely to amount to. The cry in the Board of Supervisors will be the same niggardly economy cry. The Board of Supervisors want to make a reputation, and their idea would be about the same as expressed by a number of gentlemen on this floor, that a Judge ought not to have more than

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fifteen hundred dollars, or two thousand dollars any way. Certainly it ought to be fixed either by the Convention or by the Legislature.

MR. MCCALLUM. Mr. President: I wish to inquire if an amendment to the amendment will be entertained?

THE PRESIDENT. There is an amendment to the amendment pending already.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I understand that that is the rule, and has been. I am not raising a question as to the correctness of that ruling, but I wish to point out its effect. It compels us to take a choice between evils. The general course of the Convention is this: Those gentlemen who can get the floor first present their amendments, until three or four have been presented and discussed at length, and the patience of the Convention is worn out, then the previous question is moved and no further amendment can be entertained, and you must take that or take nothing. I am not quite sure, but I suppose that if this amendment should be voted down, that the amendment that I propose to offer, and presented to my colleague, Judge Campbell, before he offered his, might possibly be in order, although the proposition now pending embraces the idea which I supposed was the foundation idea upon which we had to proceed. When we fix that we may then go on and fix the other matters, and not, as this proposition proposes, mix up matters disconnected with the main proposition, namely: how the Judges shall be paid. This Convention illustrates, certainly, upon this proposition, the truth of the schoolboy's copy-book maxim, that there are many men of many minds. Here are several dozen propositions, and yet some gentleman might move the previous question directly, and say that we shall not vote upon any other except those which happen to be presented first. I am placed in a position to have to oppose the amendment of my colleague, although it embraces the same idea that I submitted to him and submitted to the Convention, because he mixes up in that proposition the salaries of the Judges. If we provide, as I propose, that the counties shall pay one half, common courtesy requires that he and I shall allow the delegations from the different counties to say something about what that salary shall be. When, sir, this proposition was presented here, that the State should pay the entire salaries, then I and every one had a right to say how many Judges there should be, and what their salaries should be. Now, this is entirely different. If the last clause of this amendment is adopted, fairness, courtesy, and justice require that gentlemen should say what would be proper for their different counties, and their judgment about it should mainly be the rule to govern. It ought to be entirely disconnected. Let us vote upon one proposition at a time, and if we say that the county shall pay one half and the State shall pay the other half, then gentlemen will have two leading considerations in suggesting what shall be the salaries for their Judges respectively. One will be, as the State pays one half, not to fix it too low, for the State is doing liberally in this matter; the other consideration will be, that as their own constituents are to pay the balance, not to fix it too high. Their judgment will be an honest, intelligent, and impartial judgment, and they ought to be consulted. Now, Mr. Tinnin proposes that the Board of Supervisors shall fix the salaries at about two thousand dollars. That having been discussed in Committee of the Whole, and voted down by a large majority, that ought to be the end of the question. I have learned that you must submit to the views of the majority, and it seems to me useless to raise the question again, although I offered the idea in the first place. Now, although I think, in the main, the salaries, as suggested by my colleague, may be about right, I propose to vote against them with a view to offering an amendment, that the salaries shall be paid, one half by the counties and one half by the State; and after that is fixed, then vote on the question of salaries, and be governed in that mostly by the delegations from the different counties.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: It is very difficult, in any public matter, for any gentleman to get exactly what he wants. In all public matters we have got to compromise something, and find some common ground where opposing views can meet. Now, although the gentleman from Alameda, Mr. Campbell, does not, in all respects, agree with my judgment, it comes nearer to it than any other proposition which is before the Convention, and therefore I shall support it. Now, the original report of the Committee on Judiciary, on section seventeen, was not exactly what I wanted in respect to the question of salaries; I wanted them higher, still I had to agree to them, because it was the judgment of a majority of the committee. But gentlemen here have misrepresented the whole scope and meaning of section seventeen, to a great degree. Section seventeen fixes the salary in the Constitution only temporarily. That question was discussed in the Committee of the Whole, as to whether we should fix it at all in the Constitution. It was agreed that it was not a proper subject for a Constitution, it was a matter for legislation, but as the system was to go into effect, and the Judges would take their seats before the first Legislature could act, it was deemed well, for the first term, to fix it in the Constitution, thereafter leaving it for the Legislature. Now, this section seventeen must be discussed in that aspect of it, that it is a temporary expedient, and that hereafter, what we do here will not affect the salaries of Judges nor the classification. This classification is a temporary thing. Gentlemen are treating it here as if it was a permanent classification. The classification is subject to alteration by the Legislature at any time, and the salaries are subject to alteration at any time, provided that it shall not affect the salaries of any Judge during the term for which he is elected. For that reason it is not one of those permanent and enduring things which should occupy so very much of the time of the Convention. I am in favor of large salaries for the Judges, and I am in favor of it upon principles of public policy and public right. I am not in favor of it because of the advancement of any particular class or any particular people, but in the interest of the whole people. I have learned to-day, for the first time, that a man who is ignorant of Courts and the working of Courts, is better able to advise this Convention as to the policy of judicial proceedings than the man who is all the time connected with it. I have learned to-day, for the first time, that a lawyer is the least competent to explain the workings, the operation, and the machinery of the Courts.

MR. WEST. In regard to the salaries?

MR. WILSON. You recognize the picture! Now, I know myself that lawyers are brought more into contact with the great mass of the people—from the lowest class of the community, from the criminal who comes to him for a defense to the best and the richest whose interests are attacked. I know that a lawyer becomes conversant with the most confidential matters respecting the domestic relation and the private lives of the people of the State. Say what you please, when the poor man gets into trouble he comes to the lawyer and tells him that which he would not tell to a member of his own family, and I am proud to say that it is not once in ten thousand times that his confidence is betrayed. Now, take that class of men who are constantly in the Courts, constantly seeing the machinery and knowing the Judges; they always want a good Judge. The lawyer wants a good Judge. I do not care how able or powerful he is, he wants the best Judge. It may be supposed by some that an able lawyer would prefer to go before an incompetent Judge, but, on the contrary, I have never seen a lawyer who was not anxious to see the best, ablest, and most impartial Judge upon the bench. Now, there is not a fair, business view taken of these salaries. The Judge is supposed to be put down here upon the basis of ordinary occupation, when his occupation or position is entirely different from other occupations. In the first place the Judge cuts himself off from all other business. He cannot enter into the speculations and operations of other men. His office engrosses him, and the people do not like to see him engaging in other business. The best Judge is a Judge alone, and has no other business in the community. Consequently he is cut off from making money in any other branch of business. In the second place he is cut off from any other office during that term. He cannot even resign his office for the purpose of taking a position. He cannot run for any office. In that respect his position is peculiar, and different from others. He lays up no capital for the future—none whatever—in his judicial career. The lawyer who is gaining his cases and working on increases and builds up a patronage. His success in a case to-day brings clients to-morrow. If he gets some fame, some reputation, it brings money to his pocket; people say that he is active, energetic, and faithful, and therefore they go to him and his business is profitable. Not so with the Judge. The Judge on the bench may deliver the ablest decision of his whole career, or of the State; it may be a matter of which all his friends are proud, but it brings him not an additional dollar to-morrow. He has got nothing at all but the kindly approval of his fellow citizens—but not a dollar is ever added to his pocket—and at the end of his term he is turned out upon the world again to seek to make his living, not having added anything at all to his capacity, to his ability, or to his patronage. Therefore, he is not to be regarded in that narrow and close position that some gentlemen seek to regard him. Now, they say he may go and live meanly; he may go and live in a hash-house. Now, I would ask those gentlemen, what is the difference between the ordinary American laborer and the Chinese? The Chinese is opposed on the ground that he may monopolize the market because he lives meanly; because he lives upon cheap victuals; because hundreds of them crowd into a single building. The American workman is too proud to do any such thing as that. He has different modes of life, and different habits of life, and that which supports the Chinaman will not support him and his family. Now, I say there is something in the situation of a Judge which calls for a different mode of life. We do not like to see a Judge going along the street with a ragged coat. We expect to see him live in accordance with the position which he occupies. It is not a question as to how cheaply a man can live, but what is a fair, adequate compensation for a man of ability, learning, and high character. It is the highest kind of skilled labor which the people seek to employ in their behalf, and which they ask to be exercised in the purest, fairest, and most impartial manner. It is that kind of talent and that kind of ability which they are paying for, and it is the poorest kind of economy to pay that kind of men meanly. The people of the State of California, with their big, warm, generous hearts, are not mean and stingy, and do not ask to pay their officers an inadequate salary.

I say that this section here is a reduction of salaries instead of an increase of them. The salaries of the Judges of the first class have been six thousand dollars, and the Judiciary Committee reduced them to five thousand dollars. If it is reduced below that it is a mean and niggardly economy. As to the question of apportionment as between the State and county, I would say that it would cost the counties about what it costs now for the County Judges. As a whole, I approve of the amendment of the gentleman from Alameda, because it comes nearer to my views than the other amendments which are proposed, and I hope it will be adopted by the Convention.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I am opposed to the amendment of the gentleman from Alameda. You create a State officer, and you propose to exempt localities, where there is aggregated the largest amount of capital and money, from the payment of the State officers. That is the proposition, stripped of all its verbiage. I think it is unfair. If you do that I would rather go back to the old system, of five Judges, and of District and County Judges. It is better than this half system. I am surprised that the Chairman of the Committee on Judiciary gives up any part of his report, for that is the meaning of it. He abandons the system which he has been attempting to have adopted, practically. Let us either adhere to it pure and simple, or abandon it altogether and go back to the old system. I will never vote for this thing, sir; and it

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would be a strong inducement for me to vote against the Constitution if it is engrafted in it. Now, sir, there is no objection to the report of the Committee on Judiciary. The salaries ought to be permanently held in the Constitution; and the Judges ought not at each election of the Legislature to be subjected to the corrupting influence of electioneering for an increase of salary. I would rather have a salary of four thousand dollars fixed permanently than this electioneering system for four thousand five hundred dollars, or five thousand dollars. Give us a system that will be pure; give us a system that will be independent; give us a system that will command talent and honesty, and I will vote for it, I do not care how high the salaries are. But I will never vote for this system of half county and half State; because it is vicious radically, and will prove demoralizing and corrupting to the whole judicial system.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: I trust that this amendment will be voted down. I believe it has been asserted by several of the members that the Superior Judges are State officers, and that the salaries should be paid by the State, and I challenge any gentleman in this Convention to give any one reason why this should be taken from the State treasury to the counties. There is no reason or good sense in the proposition; and, as has been said by my friend, General Howard, in reference to the Chairman of the Judiciary Committee, this is the first time I have seen him show any weakness in this Convention. He has backed right square down, and I am sorry to see it.

MR. WILSON. Et tu, Brute? [Laughter.]

MR. TULLY. What would be the effect of this? The Judges would be hobnobbing with the members of the Board of Supervisors, and the first thing you would hear would be the cry of Court-house rings. Now, I am in favor of paying high salaries to Judges—salaries which will bring the best talent in the State upon the bench—and the man who is not in favor of that does not know what he is talking about, the sage of Los Angeles, Mr. West, to the contrary notwithstanding. I believe I am as good a judge of a salary as my friend from Los Angeles; and I deny that the character of a lawyer is a gambling and chance-taking profession. I say, sir, that I know men who live who have clearer cut ideas and better notions of what is right than the legal fraternity. That cannot be denied. But while you can find men with clearer cut ideas, who know more and better what is correct and what is wrong, you cannot find a more liberal and generous hearted set of men; and I would just as soon go to them for charity as I would to the gentleman from Los Angeles, or the people he represents.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I do not say that I am opposed to a classification of the counties, but if there is any classification, I say there should be something like a fair classification; there should be no exceptions. Now, by this, I do not reason that there can be any classification which will make absolute equality or do absolute justice between the counties, but there should be a classification which would be absolutely fair. Of course there are no two counties in the State that are just alike, with just the same population, consequently we must put counties with different amounts of population in the same class; that would not be equal, still it would be fair. Now, all I demand is a fair classification. What is unfair, is to take one county, with a population of seven thousand, and put it in the second class, and take another county, with ten thousand or twelve thousand, and put it in the third class; it is neither equal nor fair, but it is done in this amendment, or substitute, offered by my neighbor from Alameda. It is done as between the two counties of San Diego and Kern. This is an instance that I had occasion to call to the attention of the Convention when in Committee of the Whole, and the Committee of the Whole rectified that mistake by placing San Diego in the same class with Kern. I say that they belong in the same class, or if there is any difference between them, then San Diego should be in the upper class. At the last general election, previous to the one for members to this Convention, the vote of Kern County was one thousand two hundred and fourteen, and of San Diego County, one thousand five hundred and five; three hundred more. Now, I know that the gentleman over there, from Kern, who is a delegate at large, representing the whole State, had the good fortune to be on the Committee on Judiciary, which made this apportionment. It is everything, you know, to have a friend at Court. I know that he claims that the property of Kern is more than San Diego. I will tell you one thing, this thing of the assessed valuation of property, is one of the most delusive things in the world. The assessed valuation is just what happens to be the will, or caprice, or judgment of the local Assessor. One year the assessment in this county, or any other county, may be very large, on account of having an Assessor who is inclined to put a large valuation upon the property. Now, I would vote against this proposition if it were for no other reason than that. I am elected here as a joint delegate of two counties, San Diego and San Bernardino, and I say that I do not believe that there is five hundred difference in the population of these two counties, and still one of these counties is put in the second class and the other in the third. I protest against that. I say both go in the same class, and Kern with them. You can put them in the second or third class, and I care not which, so long as they are where they belong, and not make an invidious distinction, or any distinction.

MR. SMITH, of Fourth District. Are you acquainted with the amount of practice in Kern County—the amount of legal business there?

MR. ROLFE. I do not know anything about the practice of Kern County.

MR. SMITH. How do you know then, that it is less than San Diego?

MR. ROLFE. I believe I know as much of the practice of that county as the gentleman from Kern does. I believe I have just as much practice in that county as he has, and I never was interested in but two suits in that county in my life. Now, I will tell you a proposition which would suit me better, and I believe would solve this difficulty. Let this Convention state what the Judges of the different counties shall receive—their salary. Then say that two thousand dollars of that salary, or some fixed amount, be paid by the State to every county alike. Then let this Convention go on at present and make a temporary classification of the counties and say what the different salaries shall be; and then all above two thousand dollars, if that is the amount fixed on, must come out of the county treasury; but not refer it to the Supervisors. There are some counties in the State where the Judges ought not to receive more than two thousand dollars, as in Alpine, for instance. I admit that on a former occasion I opposed this system, and advocated the payment of these Judges by the State. I took the ground that they were State officers, and I say now that every individual in this State is interested more or less, or liable to be interested directly in every Judge in this State. But taking into consideration the difficulty of classifying these counties so as to give anything like satisfaction, I do believe, upon second thought, that the best plan to adopt would be to let the State pay two thousand dollars a year for each Judge in the State, and then let the Convention first, and afterwards the Legislature, say what the Superior Judges shall receive.

REMARKS OF MR. KLEINE.

MR. KLEINE. Mr. President: It is really amusing to me to hear the discussion of these legal gentlemen, of the lawyers. [Confusion.] Oh, I know them, sir, well; I know you, sir! and I hope you will keep quiet until I get through. I am a member of this Convention, and I claim protection from the President. I would like to be protected. Mr. President, I hope this amendment will be voted down, of Judge Campbell, to give Judges six thousand dollars a year. It is surprising, it is astonishing to me how these legal gentlemen are fighting for salaries for their colleagues, while they utterly despise and reject the poor working man. They have no word of sympathy for them; but when there is a chance for a fat salary, oh! how do they fight! How do they strive to get a fat salary. The gentleman on my left said his constituents instructed him that they were willing to pay high salaries to Judges. I deny that. My constituents and the constituents of my fellow delegates are not in favor of high salaries, and I don't believe his constituents are. We are living now in a time when the poor men are crushed down. There is just as good men work with their hands as these kid gloved gentlemen of the bar. There may be a poor lawyer, but you could not get a pure lawyer. I don't wish to hurt any one's feelings, but I tell you what you must do. I like to get a pure lawyer and I can have an independent fortune. I would send him to Barnum, and I know my fortune would be sure. I do not know how it is possible that a lawyer could be a pure man. Gentlemen, I am a plain man, I do not mince matters. Now, I say to every honest man in this Convention, vote down the high salaries of these officials. Perhaps some of you think I am excited. I speak from the bottom of my heart. Now, I say, Mr. President, six thousand dollars is too much for any man. These men have no sympathy with only one class. I hope that the time may come that working men, that the men that have to work, that they will take charge of all the offices, and then we will have a good time. [Laughter and applause.]

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I do not know what I can say to the last argument on this matter. It ought to be a warning to gentlemen of the legal profession not to defend themselves here, because they bring upon themselves such speeches as this. Now, sir, I for one am opposed to this amendment proposed by the gentleman from Alameda, Judge Campbell. I think there is great doubt, for instance, about Los Angeles wanting two Judges. I think there is still more doubt about Sonoma wanting two Judges. Santa Clara has recently made up its mind that it wanted two. Some time ago Judge Temple told me he could do all the business of Sonoma County. I understand he has changed his views.

MR. MORELAND. He told me he could not.

MR. SHAFTER. He has a perfect right to change his ground, but he now takes care of the business of Sonoma, Marin, and Mendocino. He takes care of three counties now. He is to be reduced to Sonoma County and take care of the probate and county business. It is the same in Los Angeles. I do believe that one industrious man can do the whole business in that county. It seems to me that these counties are put in at ten thousand dollars apiece to make things get along smoothly. I prefer the plan of paying two thousand dollars a year from the State treasury, and letting the counties pay the balance. It is said that this is a State office. So it is, and the State pays a part of it, but almost all the business belongs to the county. Occasionally a case from abroad is sent there to be tried. What particular wrong is there in the county paying part of the expense? I shall vote against this amendment, and against every proposition to pay ten thousand dollars to these counties that I do not think need it.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I shall vote against the pending amendment in the main for the reasons that have been given by the gentleman from San Bernardino, and the gentleman from Marin, Mr. Shafter. I see the difficulty in our reaching a decision. The proposition of Judge Campbell covers first, a classification of the counties of the State, fixing for each class its Judges. Now, there are all sorts of opinions, and scarcely two gentlemen on this floor have the same opinion as to the details in this measure. For instance, it is said by one side that no one should receive a salary as high as five thousand dollars. Now, I differ with them on that. Then, again, others say that four thousand dollars is the right sum, and others claim that four thousand five hundred dollars is the proper sum. You will hardly find two gentlemen on the floor who agree. When we come to vote on this amendment, it covers

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the salary of every Superior Judge of the State, as well as of the Judges of the Supreme Court, and passes upon another question upon which we are as much divided as upon that. Here some gentlemen say that we should not have the salaries of these Judges paid except from the State treasury. Others claim that the salary, whatever it may be fixed at, should be divided equally between the State and the county. Others claim that the State should pay two thousand dollars for each Judge, and the counties make up the balance to a proper salary. I think that idea is correct. I think my friend from San Bernardino has hit the nail squarely on the head. We never shall agree upon this proposition so long as you are to pay these salaries all out of the State treasury; but if you provide that they shall receive from the State treasury two thousand dollars, then the thing is equalized, and then every member assumes a direct responsibility to his constituents in the matter of fixing the salaries. We will have no difficulty in fixing these salaries satisfactorily, if that proposition is adopted. I agree to the utmost with Judge Shafter in what he says in regard to those counties having two Judges. It is not a fair proposition. I think we will dispose of this matter quickly, if we can first settle this question as to how the Judges shall be paid. Why not take up the questions one at a time, and know what we are voting upon; then we shall come to a satisfactory conclusion.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: I am opposed to all that has been proposed, and if something better is not proposed, I will be opposed to all that will be proposed. It is like a grab-bag; you run in your hand and pull out a county, and if it is a five thousand dollar county, that is all right. There is no system, and nothing to be governed by. It does seem to me that the salaries of this State ought to be regulated by a graduated system, and that they ought to be governed by population. If San Francisco, and some of the larger counties around San Francisco, are desirous of paying five thousand dollars, all right. I have no objection to it. Many of the counties are not able to pay five thousand dollars, and the Legislature ought not to be bothered all the time. The proposition of Judge Rolfe, that the State pay two thousand dollars, I think is a good one, with the further provision that the counties be graded into three grades, according to population. That will give something like permanence.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: I am not any stickler for any particular system or arrangement of counties. I am not in favor of the present amendment, but I shall vote for it. The proposition passed by the Committee of the Whole did not suit me, but I voted for it. I say, that if we do not yield something of our opinions we will never get through with this. Now, the gentleman from San Bernardino said that it is impossible for us to get at a correct basis. We have found that out long ago; but the gentleman in admitting that fact has made an attack upon Kern County, or rather upon myself. Not only that, but he has made serious charges, I claim, upon the Judiciary Committee. Now, I would feel complimented in being credited with the power of influencing that committee in favor of Kern County, were it not that the charge is rather a dishonorable one, to say that that committee has been guilty of trading in this matter. As a member of that committee, I throw back the charge, and say that it is unmanly to bring personal matters into the contest upon this floor. So far as Kern County not being properly classified here, the matter was not brought up by myself so much as by the testimony of other gentlemen upon this floor, eminent members of the bar, who have gone to Kern County, and who have some knowledge of the business there. Now, I undertake to say that the legal business of Kern County is far above the average of other counties in this State; that it almost ranges with the second class counties of this State, such as Sacramento, Santa Clara, Sonoma, and Alameda. If there is a county that should have an able Judge, one of the first grade, it seems to me that it ought to be the County of Kern, and especially the first term, because there is not a single doubt but that there is an amount of business there at present that will continue for the first term of the Judge that will be elected at the next election. In regard to this matter of the counties paying, I wish to say one thing. If the counties are forced to pay an indefinite amount, if a certain amount is fixed for the State to pay and the balance left to the Board of Supervisors, I say that the Supervisors will be influenced in every county, or in many of the interior counties, by what is known as the "Court House rings," that exist in many of them. I know it to be the case in my county, and I know it has been the case that the Court House ring has controlled matters there for nine or ten years completely, you might say. It is the same in other counties. These things will continue to be; and whenever a Judge runs for the office, he will have to see the Supervisors, and it will be a part of his electioneering business to see that the Supervisors will fix up this matter properly. I say that it would be unwise to leave this matter to the counties.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

SPECIAL ORDER.

MR. REYNOLDS. Mr. President: The special order for two o'clock to-day is the resolution in relation to the University land grant. But, inasmuch as the Convention has been for twenty-four hours busy considering the article on judiciary, and more especially upon that part relating to salaries, and have not reached a conclusion yet, I have no wish to introduce the consideration of these resolutions now, and am perfectly willing that they shall go over until to-morrow morning, at half-past nine o'clock.

So ordered.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Alameda, Mr. Campbell.

Lost.

MR. TINNIN. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'each,' in the seventh line, and insert, 'Judges of the Superior Courts shall receive an annual salary of two thousand dollars, payable at stated times, out of the State treasury. The Supervisors of any county may increase the salary of the Judges of the Superior Courts to an amount not exceeding five thousand dollars per annum, which increase shall be paid out of the county treasury.'"

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: The idea that a Judge shall be placed on a footing lower than that of a Constable or Justice of the Peace, is absurd. The State of California, through its legislative department provides what shall be paid County Clerks, what shall be paid Recorders, and all the other officers, but when it comes to the case of a Judge of a Court of general jurisdiction, he is put on a level lower than all; and whether he is to receive a reasonable compensation or not, is dependent upon the Board of Supervisors. Now, sir, I cannot see anything in this proposition to commend itself to any man, unless it be this: That some men are so anxious to have a reduction by this Constitution, and if they cannot get it anywhere else, they are willing to make a strike at the judiciary.

MR. TINNIN. Do you intend it in that way?

MR. CROSS. I intend it for any man who fills the bill. If the coat fits you, wear it; if not, don't put it on. The State law provides that a Constable shall receive so much salary for certain services, and when he has performed the services, all he has to do is to make out his bill, and present it to the Board, and the Board must pay it. But, sir, when the Judge comes to the office, he has not merely to make out his bill, but he must first come before the Board to see if they will allow him to present his bill. Now, sir, I do not know whether my experience with Boards of Supervisors has been that of others or not, but I am not favorably impressed with the probabilities that they will, as a rule, do what is right and proper in this matter. But I do know this, that any system that fixes the salaries of Judges at one third less than is paid to an ordinary good lawyer, will bring us Judges of very poor material, and we will then experience some of the results of this kind of economy, which proposes to fix salaries at such a rate that only the poorer class of lawyers can afford to accept the position; and, sir, when that class of men are made Judges of, we shall not only need a double-headed Supreme Court, but we shall need a Supreme Court with seven heads. Perhaps two thirds of all the cases tried will have to be appealed to the Supreme Court. Then, sir, gentlemen will begin to find that it is cheaper to employ a good Judge in the Superior Court, than it is to employ poor lawyers. The cost of one appeal amounts to more than the difference in the salary. I say let us come to a conclusion on this matter. I am in favor of economy, but let us use reasonable economy. An expensive coat is sometimes cheaper than a cheap coat, because it wears better and does better service. I do not believe we are doing our duty by leaving this matter to the Board of Supervisors. I believe this body is capable of determining what are reasonable salaries, and it is our duty to do it. I don't know of any constitutional or legislative body that has ever shirked a reasonable responsibility in this matter; and I hope this Convention will determine what shall be a reasonable compensation for our Judges, and not leave them to the Supervisors. I see another bad feature. We provide in this Constitution that the Judge shall have two thousand dollars a year. Now in many counties of this State there will not be a meeting of the Board of Supervisors between the time when the Constitution is adopted and the election. And yet we provide here that the salary of a Judge shall not be increased or diminished during the term for which he shall have been elected. After a man has been elected you cannot make his salary more or less, and yet in many counties there will be no meeting of the Board of Supervisors between the date of the adoption of this Constitution and the election of the Judge. There are other reasons why this provision should not be adopted. One of them is that it will result in this, that the smaller counties will have the salaries of their Judges paid by the State in full, while the larges counties will only have a small portion of the salary paid by the State. There is Los Angeles County, which is so ably represented on this floor. They demanded two Judges at a high salary, but when it comes to paying half the salary out of their own treasury, they won't submit to it. They are not willing that their forty-seven million of inhabitants, with four hundred and seventy billions of property, shall pay any portion of the salaries of their Judges. [Laughter.]

REMARKS OF MR. TINNIN.

MR. TINNIN. MR. President: I did not intend to say anything upon this subject. I considered that the subject had been almost worn out; but after the extreme self-laudation and egotistic speech of the gentleman from Nevada, I deem it due to me. Now, sir, as far as this question is concerned, I hold that this amendment will cover this subject entirely. The gentleman avoids the question. He holds that Judges will have to get down on their knees before the Supervisors for their pay, which he knows is not so. The first part of this section distinctly says that no Judge's salary shall be raised or lowered after he is elected. Now, how can any gentleman reason that any Judge will apply to the Board of Supervisors to have his salary raised? Another point that the gentleman tries to make is that the Board might not meet. Now, the vote on this Constitution will occur about the first week in May. The election

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will not occur till September, and there is no Board of Supervisors in this State that will not meet within that time. Now, sir, I offer this amendment in good faith, and I hope it will be adopted.

The ayes and noes were demanded by Messrs. Larkin, Tinnin, Hunter, White, and Doyle.

The roll was called, and the amendment rejected by the following vote:

AYES.

Brown,	Kelley,	Rhodes,
Caples,	Keyes,	Schomp,
Charles,	Kleine,	Shafter,
Davis,	Laine,	Smith, of Santa Clara,
Dean,	Larkin,	Smith, of San Francisco,
Dudley, of Solano,	Lavigne,	Sweasey,
Evey,	Lewis,	Swenson,
Freud,	Mansfield,	Thompson,
Hager,	McCoy,	Tinnin,
Hall,	Moffat,	Tuttle,
Harrison,	Moreland,	Vacquerel,
Heiskell,	Nelson,	Weller,
Hitchcock,	Noel,	West,
Howard, of Mariposa,	Ohleyer,	White,
Jones,	O'Sullivan,	Winans—45.

NOES.

Andrews,	Garvey,	Porter.
Ayers,	Gorman,	Reynolds,
Barbour,	Graves,	Ringgold,
Barry,	Hale,	Rolfe,
Barton,	Harvey,	Schell,
Beerstecher,	Herold,	Shoemaker,
Belcher,	Hilborn,	Shurtleff,
Bell,	Holmes,	Smith, of 4th District,
Biggs,	Howard, of Los Angeles,	Soule,
Boggs,	Huestis,	Stedman,
Boucher,	Hughey,	Steele,
Burt,	Hunter,	Stevenson,
Campbell,	Inman,	Swing,
Casserly,	Joyce,	Townsend,
Chapman,	Kenny,	Tully,
Condon,	Larue,	Turner,
Cowden,	Lindow,	Van Dyke,
Cross,	Martin, of Alameda,	Van Voorhies,
Crouch,	McCallum,	Walker, of Tuolumne,
Dowling,	McComas,	Waters,
Doyle,	McNutt,	Wellin,
Eagon,	Mills,	Wilson, of Tehama,
Edgerton,	Morse,	Wilson, of 1st District.
Estee,	Nason,	Wyatt,
Farrell,	Neunaber,	Mr. President—76.
Filcher,		

MR. McCALLUM. Mr. President: I offer an amendment.

THE SECRETARY read:

"In line three, strike out the words 'from the State treasury'; in line five, after the word 'elected,' insert 'the salaries of the Justices of the Supreme Court shall be paid by the State. One half of the salary of each Superior Court Judge shall be paid by the State, the other half thereof shall be paid by the county for which he is elected.'"

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Alameda, Mr. McCallum.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: I desire merely to explain this amendment, that gentlemen may understand that they are voting simply upon one proposition, namely: whether the State shall pay half the salaries and the county half. If this section is adopted in this way it will stand thus: that the Judges of San Francisco will receive a salary of four thousand five hundred dollars, and the other Judges a salary of three thousand five hundred dollars each; that is, that the State will have to pay for the first class, two thousand two hundred and fifty dollars each, and the counties, two thousand two hundred and fifty dollars each. As to the others, the State will pay one thousand seven hundred and fifty dollars and the counties the balance. This amendment presents the single proposition that the State shall pay half and the county half. It is unnecessary to repeat the arguments which have been made here.

MR. EAGON. I raise the point of order, that the proposition presented in this amendment has already been voted down in the amendment of Judge Campbell.

THE PRESIDENT. The point of order is overruled; it is a different proposition.

MR. EDGERTON. I desire to ask the gentleman if it is not true that many of the counties are so badly in debt that the Judges would have to take their pay in scrip, so far as that portion is concerned, which would greatly depreciate their salaries?

MR. McCALLUM. The Judiciary Committee, of which the gentleman is a member, reported for those counties at two thousand dollars. If my proposition is adopted they will get one thousand seven hundred and fifty dollars from the State.

MR. EDGERTON. My proposition is that there will be no uniformity at all. Some of these smaller counties will pay their share in depreciated scrip, while others will pay in money. Perhaps some of them will get fifty cents on the dollar, and some thirty cents. Now, sir, I am opposed to subjecting the judicial officers of this State to any such discount upon their salaries.

MR. McCALLUM. I will take that as the gentleman's speech.

MR. EDGERTON. Is it not true that this amendment will relieve your county to a very great extent?

MR. McCALLUM. Alameda has two Judges, at an expense of nine thousand dollars to the State. Under this amendment the State would pay four thousand five hundred dollars, and the county four thousand five hundred dollars. My judgment is that the county would pay as much in the one case as in the other. If this amendment is adopted it will have a great influence in assisting us to arrive at a conclusion as to the proper number of Judges. It is the only hope which I have of ever getting through with our work.

MR. EDGERTON. As far as getting through is concerned, I am ready to support a motion to adjourn *sine die* now; but I am not going to support an amendment which subjects judicial officers to any such proceeding as this.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Howard, Smith of Fourth District, Waters, and Cross.

THE PRESIDENT. The question is: Shall the main question be now put?

Lost.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: As far as the remarks of the gentleman go with regard to depreciated county scrip, it has no reference to this question at all. If the gentleman can name a county in this State where the County Judge is not satisfied with his position, I would like to have him name one. The same fund that pays the County Judge, and other county officers, will pay that portion of the salary of the Superior Judge in this case. I don't know why these men who are elected Superior Judges should be entitled to any superior rights over all other officers, over the Legislature, and even over this Convention. Why should there be a special privilege for these men? Why should it be paid out of the State treasury when the other county officers are paid out of the county treasury? We don't propose to import men from San Francisco and Sacramento for these positions. In order to prevent their hanging about the Legislature for an increase of pay, we propose to say that the counties shall pay a portion. It is not a question of the benefit of localities. I have not come here to legislate in the interest of localities, but in the interest of the people of the whole State. We, of El Dorado County, don't ask the State to pay for our Judges. The other counties don't ask it. I believe it is in the interest of a good judicial system, and in the interest of good Government, that the State shall pay a portion and the counties a portion, so that questions will not constantly rise, so that conflicts will not constantly occur, in relation to the raising of Courts to a higher grade. I hope this amendment will be adopted.

MR. EDGERTON. This proposition, if adopted, leaves the question open as to how these Judges are to be paid, and it leaves the question open as to whether the Legislature may increase or diminish salaries. Now, the gentleman from El Dorado represents a county whose scrip is largely depreciated.

MR. LARKIN. It pays the officers in cash.

MR. EDGERTON. It is not ready to pay its debts. The Supervisors skulk into their room at night so as to avoid paying their just debts, and they may do it again. It is surprising to me that a gentleman who represents such a county as that should not be willing to have these Judges paid by the State, as they have a right to be, instead of having them paid in county scrip worth perhaps twenty cents on the dollar.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. President: I am surprised at Mr. Larkin. I agree entirely with the gentleman from Sacramento in regard to this matter. Now, sir, we do not hear these objections made by gentlemen from San Francisco. The people of that city, by their representatives on this floor, do not object to these salaries being paid by the State. But we find men from the mountain counties, from the small counties of this State, where the population is run down, where the counties are burdened with debt and high taxes, endeavoring to fasten upon their own people an additional burden which the State ought to bear, and is perfectly willing to bear. San Francisco and other wealthy counties are perfectly willing to relieve us of a portion of the burden which we are so ill able to bear, and why should any reasonable man turn his back on his own county and reject the offer.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Alameda, Mr. McCallum.

The ayes and noes were demanded by Messrs. Larkin, McCallum, Brown, Dudley of Solano, and Doyle.

The roll was called, and the amendment adopted by the following vote:

AYES.

Barbour,	Dean,	Heiskell,
Barton,	Dowling,	Herold,
Beerstecher,	Doyle,	Hitchcock,
Belcher,	Dudley, of Solano,	Holmes,
Bell,	Estee,	Hughey,
Biggs,	Evey,	Hunter,
Brown,	Farrell,	Inman,
Caples,	Freeman,	Joyce,
Casserly,	Freud,	Kenny,
Chapman,	Gorman,	Keyes,
Charles,	Grace,	Laine,
Condon,	Hager,	Larkin,
Cross,	Hall,	Larue,
Davis,	Harrison,	Lavigne,

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Lewis,	Ohleyer,	Sweasey,
Lindow,	O'Sullivan,	Swenson,
Mansfield,	Pulliam,	Thompson,
Martin, of Alameda,	Rhodes,	Tuttle,
McCallum,	Ringgold,	Vacquerel,
McComas,	Rolfe,	Van Dyke,
McCoy,	Schomp,	Van Voorhies,
Moffat,	Shafter,	Wellin,
Moreland,	Shoemaker,	West,
Morse,	Shurtleff,	Wickes,
Nason,	Smith, of Santa Clara,	White,
Nelson,	Smith, of San Francisco,	Wyatt—74.
Neunaber,	Stedman,	

NOES.

Andrews,	Howard, of Mariposa,	Steele,
Barry,	Huestis,	Stevenson,
Boggs,	Jones,	Swing,
Boucher,	Kelley,	Tinnin,
Burt,	Kleine,	Townsend,
Campbell,	McFarland,	Tully,
Crouch,	McNutt,	Turner,
Eagon,	Mills,	Walker, of Tuolumne,
Edgerton,	Noel,	Waters,
Filcher,	Porter,	Weller,
Garvey,	Reynolds,	Wilson, of Tehama,
Graves,	Schell,	Wilson, of 1st District,
Hale,	Smith, of 4th District,	Winans,
Harvey,	Soule,	Mr. President—42.
Howard, of Los Angeles,		

MR. WILSON, of First District. Mr. President: I offer an amendment.

THE SECRETARY read:

"SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive for their services or compensation, which shall not be increased or diminished during the term for which they shall have been elected: During the term of the first Judges elected under this Constition, the annual salary of the Justices of the Supreme Court shall be six thousand dollars each, payable quarterly out of the State treasury. Until otherwise changed by the Legislature, the Superior Judges shall be divided into three classes, at the following annual salaries, payable quarterly, that is to say: To the first class, five thousand dollars; to the second class, four thousand dollars; to the third class, three thousand dollars.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I have presented this amendment in this shape for the purpose of getting the question divided. In the first place, it will enable gentlemen to vote and fix salaries for the different classes distinct and separate from the counties. In that way they can vote upon the abstract question: What shall the salaries be? In a subsequent section we can take and classify the counties. I believe in that way we can arrive at a conclusion. I believe it is better to fix salaries in this way, independent of any consideration of what counties are to be in certain classes.

MR. LARKIN. I am in favor of that amendment.

MR. MCCALLUM. I raise the point of order, that the amendment proposes to strike out what the Convention has already inserted, namely: that half the salary of the Judge shall be paid by the county, and half by the State. This amendment says they shall be paid out of the State treasury.

THE PRESIDENT. The point is not well taken. He moves to strike out the words "with others."

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: When this report was before the Committee of the Whole, while it did not entirely meet my views, still, it was indorsed by such eminent men, that I did not then offer any opposition to it. But, sir, the farther I look into it, the more I hear about it, the more I am satisfied this whole scheme is worse than the old system. This scheme might do very well in other States; it might do in a State that has not the area of territory that we have, with a larger population; in a State where the people are divided pretty nearly evenly in the counties, and where at least each county can afford to support one Judge. But we have an ahomalous condition of things here. We have a large territory with a small population. Now, under the present system, these small counties can employ County Judges to do their County Court business at a small salary. Now we are to have a system by which every county in the State is to have a Superior Judge, no matter how small the county. You cannot get them for small salaries, because they are debarred from all other business. It is said that the Supreme Court, being divided into two branches, can do more business. I doubt it very much. I am opposed to the whole thing, and if if be in order, I move that this report be rereferred to the committee, with instructions to strike out and insert the judiciary system of the present Constitution.

MR. VAN DYKE. I hope the Chairman of the committee will accept an amendment, to the effect that the State pay half and the county half, inasmuch as that seems to be the wish of the Convention. It will only open that controversy again if it is not done.

MR. WILSON, of First District. I had drawn that amendment before that last vote was taken. If that is the sentiment of the Convention I have no objection to changing it.

MR. VAN DYKE. It is the sentiment of the Convention, two to one.

THE PRESIDENT. If there is no objection the gentleman will have leave to amend the proposition.

MR. HOWARD, of Los Angeles. It is all wrong. It amounts to taking care of San Francisco, and no one else.

MR. WALKER, of Tuolumne. Mr. President: I offer an amendment which I wish to have read, for information.

THE SECRETARY read:

"Amend section seventeen, by striking out all after the words 'salary of,' in line eight, and inserting 'three thousand dollars each, payable quarterly, except the Judges of the City and County of San Francisco, and the County of Alameda, which shall receive four thousand five hundred dollars each; provided, that the salaries paid to these Judges, two thirds shall be paid out of the State treasury, and one third shall be paid by the counties.'"

MR. BIGGS. Mr. President: Will a notice to reconsider be in order?

THE PRESIDENT. No, sir.

MR. BIGGS. I hope the amendment will not pass, for it is well known that the interior counties are not able to pay half the salary of their Superior Judges. I hope the amendment will not pass. I am surprised at the gentleman accepting such a proposition. I voted aye, in order to move a reconsideration.

MR. WILSON. Here is another gentleman voted aye, because you did.

MR. HOWARD, of Los Angeles. Mr. President: I wish to make an inquiry. When will it be in order to move to strike out this salmagundi?

THE PRESIDENT. Which salmagundi? [Laughter.]

MR. HOWARD. This entire article.

THE PRESIDENT. I do not think it will be in order at all.

MR. STEDMAN. Mr. President: I would inquire if, after we adopt this amendment, it will be in order to adopt further amendments?

THE PRESIDENT. No, sir.

MR. STEDMAN. Well, then, sir, I desire to call the attention of this Convention to the fact that this amendment proposes to pay first-class Judges five thousand dollars. I certainly believe that is too much, and in the interest of the overburdened taxpayers, I object to it, and protest against it. I also desire to call attention to the fact that second-class Judges are to be paid four thousand dollars. I protest against that. It proposes to pay third-class Judges three thousand dollars, and that is also too much. If we adopt the amendment, the system will cost a great deal more than that proposed by the Committee of the Whole.

SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. President: I had made up my mind that I would listen to the lawyers on this subject, and not say a word. But it has assumed an aspect that compels me to speak, sir. The proposition of the gentleman from San Francisco is utterly inadmissible. I would say to the gentleman from Los Angeles that I do not propose to starve or destroy the judiciary. On the contrary, I desire to promote its efficiency, its honesty, its integrity. But it does not follow because I desire to do this, that I shall favor a proposition to load down the taxpayers of California beyond the point necessary to be done. Now let us see what the proposition amounts to. The gentleman proposes three thousand dollars a year for first class Judges. Take the county of Alpine. It pays its County Judge now one thousand dollars a year. Who can dispute the fact that he is a good, honest, efficient County Judge? Under this provision, in addition to that and the one thousand five hundred dollars paid by the State, the people of that county would have to contribute five hundred dollars besides, perhaps to the very same gentleman. What will the people say to that? I leave gentlemen to infer. Take other counties, while the objection might not be so clear, yet I hold that it is not in accordance with reason and justice. The gentlemen have an overweening desire to uphold the dignity and honor of their profession. While I can excuse them for such a laudable desire, yet I feel impelled to call upon them to consider the necessities and rights of other men as well as themselves. Now, is it true that it is necessary for the taxridden people of California to pay from three thousand to five thousand dollars a year for these places? I deny it. It is true that in the great cities there are eminent gentlemen of the profession who can command such salaries, but they are the exception. But it is also true that many of our best Judges are incompetent to earn such salaries at the bar. I do not desire to drag the profession down, nor do I want to starve the Judges out, nor impair the efficiency and honor of the Courts. I desire no such thing. Nor do the taxpayers desire any such thing. All they desire is that we shall pay a fair price for fair services rendered. The whole thing resolves itself now into one of values. Will the services of the men who are to be elected to these places be worth more than that in the market? It is time that we realized that the flush times of 'forty-nine have passed, and lawyers must come down off their high horses as the rest of the people have had to do. The people of California are really no better off to-day than the people of the other States, and the Judges are paid no such prices there, as the gentlemen well know. Considerations of principle, as well as considerations of economy, demand that these salaries shall be cut down.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Wilson.

The ayes and noes were demanded by Messrs. Stedman, West, Evey, Nason, and Wilson of Tehama.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barry,	Chapman,	Graves,
Belcher,	Crouch,	Hager,
Boggs,	Dudley, of Solano,	Hall,
Campbell,	Estee,	Hilborn,
Casserly,	Freeman,	Hitchcock,

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Hunter,	Moreland,	Townsend,
Kelley,	Morse,	Tully,
Larue,	Noel,	Van Dyke,
Lewis,	Ohleyer,	Van Voorhies,
Mansfield,	Pulliam,	Wilson, of Tehama,
Martin, of Alameda,	Schomp,	Wilson, of 1st District,
McFarland,	Shafter,	Winans,
Mills,	Shoemaker,	Mr. President—41.
Moffat,	Shurtleff,	

NOES.

Andrews,	Harrison,	Porter,
Barbour,	Harvey,	Reynolds,
Barton,	Heiskell,	Rhodes,
Beerstecher,	Herold,	Ringgold,
Bell,	Holmes,	Schell,
Biggs,	Howard, of Los Angeles,	Smith, of Santa Clara,
Boucher,	Howard, of Mariposa,	Smith, of 4th District,
Brown,	Huestis,	Smith, of San Francisco,
Burt,	Hughey,	Soule,
Caples,	Inman,	Stedman,
Charles,	Jones,	Steele,
Condon,	Joyce,	Stevenson,
Cowden,	Kenny,	Sweasey,
Cross,	Keyes,	Swenson,
Davis,	Kleine,	Swing,
Dean,	Laine,	Thompson,
Dowling,	Larkin,	Tinnin,
Doyle,	Lavigne,	Turner,
Eagon,	Lindow,	Tuttle,
Edgerton,	McCallum,	Vacquerel,
Evey,	McComas,	Walker, of Tuolumne,
Farrell,	McCoy,	Waters,
Filcher,	McNutt,	Weller,
Freud,	Nason,	West,
Garvey,	Nelson,	Wickes,
Gorman,	Neunaber,	White,
Grace,	O'Sullivan,	Wyatt—82.
Hale,		

MR. WELLER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Substitute after the word 'each,' in seventh line, 'until otherwise provided by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable quarterly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, Butte, Colusa, Contra Costa, Amador, Fresno, Kern, Los Angeles, Monterey, Napa, Nevada, Placer, Sacramento, Santa Clara, Stanislaus, San Joaquin, Solano, Sonoma, Yolo, Yuba and Sutter combined, which counties shall receive an annual salary of four thousand dollars each, payable quarterly.'"

REMARKS OF MR. WELLER.

MR. WELLER. Mr. President: In offering that amendment, I shall not attempt to make a speech, because there has been a good deal of talk already. I only make this apology for it. It reduces the expenses about six thousand dollars below the present measure. According to that amendment the expenses will be two hundred and seventy-four thousand dollars annually. The present expense is two hundred and eighty thousand dollars. The classification of the counties is based upon the assessed value of their property and their representation combined. I have compiled the statistics very carefully, and I think it is right.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: That amendment provides, like nearly all the rest, that the salaries shall be payable quarterly. The salaries have heretofore been payable monthly, and I can see no reason why they should not in the future be paid monthly instead of quarterly. A Judge needs money to live on the same as the rest of us, and why should he be compelled to wait three months when the money is lying idle in the vaults. I suggest to the gentleman that he make the amendment read monthly instead of quarterly. It seems to me that this will be sanctioned by the common sense of the Convention.

MR. WELLER. I will accept the amendment.

MR. STEDMAN. I object.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Santa Clara, Mr. Weller.

Lost.

NOTICE.

MR. BIGGS. Mr. President: I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the McCallum amendment to section seventeen of the amended report of the Committee on Judiciary was passed. Also, the concurrence of and adoption of section seventeen by this Convention.

MR. HUESTIS. Mr. President: I offer an amendment or substitute.

THE SECRETARY read:

"SEC. 17. The Justices of the Supreme Court and the Judges of the Superior Courts shall severally at stated times, during their continuance in office, receive from the State treasury for their services, a compensation which shall not be increased nor diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each, to be paid monthly out of the State treasury. The Superior Judges shall be divided into three classes at the following salaries, payable quarterly, that is to say: to the first class, four thousand dollars; to the second class, three thousand dollars, and to the third class, two thousand dollars; provided, that half the salary of the Superior Judges shall be paid by the State, and the other half thereof shall be paid by the county."

MR. VAN DYKE. That provides, in the first place, for paying these salaries out of the State treasury.

MR. HUESTIS. That is a mistake in correcting it. I can obviate that.

MR. HOWARD, of Los Angeles. If you obviate that I shall vote against it.

MR. HUESTIS. All right; everything goes. Let it stand.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Humboldt, Mr. Huestis.

The ayes and noes were demanded by Messrs. West, Wyatt, Huestis, Kelly, and Howard.

MR. HUESTIS [pending roll call.] Mr. President: It is evident that there is a mistake in the wording, and I ask leave to withdraw it.

Leave was granted.

MR. HARVEY. Mr. President: I offer an amendment by way of substitute.

THE SECRETARY read:

"SEC. 17. The Justices of the Supreme Court shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation, which shall not be increased or diminished during the term for which they shall have been elected. The annual salaries of the Justices first elected under this Constitution shall be six thousand dollars each. The Judges of the Superior Courts, until classified by the Legislature, are hereby classified as follows: Those of counties containing twenty thousand inhabitants or over, shall constitute the first class; those of counties containing eight thousand inhabitants and under twenty thousand, shall constitute the second class; and of all counties containing less than eight thousand inhabitants, shall constitute the third class. The annual salaries of the Judges of the Superior Courts shall be as follows: The counties of the first class, four thousand dollars each; for counties of the second class, three thousand dollars each; for counties of the third class, two thousand dollars each; and such salaries shall not be increased or diminished during the term for which they shall have been elected, which compensation shall be paid at stated times during their continuance in office, as follows: two thousand dollars out of the State treasury, and the remainder out of the treasuries of their respective counties. The Legislature may by law provide for the consolidation of counties for judicial purposes, and fix the compensation of the Judges of such counties."

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Solano, Mr. Harvey.

SPEECH OF MR. HARVEY.

MR. HARVEY. Mr. President: It may seem somewhat foolish in me to offer this amendment. I have tried for some time to get the floor in order to give it a chance to be voted down. In support of this amendment I wish to say a few words. I contend that in many respects this amendment is better than the one which preceded it. It provides first for the proper classification of the counties. The classification provided here is the same now fixed by law, which has been in force ever since the adoption of the Codes. There is uniformity as well as economy. It decreases the amount of pay; and right here let me say that we seem to have forgotten the old war cry of economy, which echoed through this hall a few weeks ago, and I am alluding to the action of this Convention when the article on Executive department was under consideration. Then three thousand dollars was supposed to be sufficient for the Secretary of State; three thousand dollars was deemed sufficient for the State Controller. I cannot see why it will not apply just as well to the Judges. Take the office of Controller. Here is my friend Stedman, do you suppose he would consent to take that office for three thousand dollars a year? Not much. Again, this amendment leaves the question flexible for the next Legislature to act upon. It also relieves the poor counties from a great deal of responsibility. It provides that Judges from the third class shall receive their entire salary from the State treasury, and I say that is right. The last clause, that the Legislature may provide for the consolidation of counties, I contend is a very necessary provision. It will often become necessary to consolidate counties for judicial purposes. I have seen this system tried in the State of Nevada, and they were forced to that conclusion. When the Constitution of that State was first framed it provided that each county should form a judicial district. That system was soon changed, counties of small business and population were consolidated, and a large amount was thus saved.

Now, I wish to call attention to another thing. I took occasion yesterday to look over the cases and examine as regards the salaries paid to Judges. In the twenty-second district, composed of the counties of Mendocino, Sonoma, and Marin, I find that the salary of the Judge is five thousand dollars. The salary of the County Judge of Mendocino, is one thousand five hundred dollars; Sonoma, three thousand dollars; and Marin, one thousand eight hundred dollars. Total for County Judges, six thousand three hundred dollars. Total amount, eleven thousand three hundred dollars. But we as economists have provided for giving Sonoma County nine thousand dollars for salaries alone. Mendocino and Marin three thousand five hundred dollars each, making sixteen thousand dollars. Here is an increase in these three counties of four thousand seven hundred dollars. And take the matter nearer home, in my own district, composed of Napa, Lake, and Solano. The District Judge gets five thousand dollars. The County Judge of Napa, gets one thousand eight hundred dollars; Lake, one thousand dollars; and Solano, two thousand dollars; making four thousand eight hundred dollars, or nine thousand eight hundred dollars altogether per annum.

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But we propose here to give each one of these counties a Judge at three thousand five hundred dollars, making a total salary of ten thousand five hundred dollars, or an increase of seven hundred dollars. Now, sir, I hope the Convention will give this amendment due consideration before voting on it. I would like to hear from some of the members of the legal profession. While I claim to be a lawyer, I am not lawyer enough to hurt, and there may be others in the same fix.

MR. BARTON. Mr. President: I believe this amendment meets the case. I know that our delegation are in favor of it. I believe it contains a proper classification, and I know that the salaries are high enough, and I hope it will be adopted.

THE PREVIOUS QUESTION.

MR. WATERS. This question has been discussed over and over, forty or fifty times, and I now move the previous question.

Seconded by Messrs. Larkin, Freeman, Tully, and Holmes.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried; by a vote of 65 ayes to 35 noes.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Solano, Mr. Harvey, which the Secretary will read.

THE SECRETARY read:

"SEC. 17. The Justices of the Supreme Court shall severally, at stated times during their continuance in office, receive from the State treasury for their services a compensation which shall not be increased or diminished during the term for which they shall have elected. The annual salaries of the Justices of the Supreme Court first elected under this Constitution shall be six thousand dollars each. The Judges of the Superior Court, until classified by the Legislature, shall be classified as follows: Those counties containing twenty thousand inhabitants or over shall constitute the first class, those counties containing eight thousand inhabitants and under twenty thousand shall constitute the second class, and all counties containing less than eight thousand inhabitants shall constitute the third class. The annual salaries of said Judges shall be as follows: For counties of the first class, four thousand dollars each; for counties of the second class, three thousand dollars each; for counties of third class, two thousand dollars each; and such salaries shall not be increased or diminished during the term for which they shall have been elected, said compensation payable at stated times during their continuance in office, two thousand dollars thereof out of the State treasury, and the remainder out of the treasuries of their respective counties. The Legislature may by law provide for the consolidation of counties for judicial purposes, and fix the compensation of the Judges for such counties."

The ayes and noes were demanded by Messrs. Brown, Caples, Larkin, Bell, and White.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barton,	Harvey,	Rolfe,
Bell,	Heiskell,	Schomp,
Brown,	Hitchcock,	Shafter,
Burt,	Huestis,	Smith, of Santa Clara,
Charles,	Hunter,	Soule,
Condon,	Inman,	Stedman,
Davis,	Kleine,	Sweasey,
Dean,	Larkin,	Swenson,
Dudley, of Solano,	Lewis,	Thompson,
Evey,	Mansfield,	Tinnin,
Filcher,	Moffat.	Tuttle,
Freeman,	Moreland,	West,
Gorman,	Morse,	White,
Grace,	Nason,	Wilson, of Tehama,
Hager,	Pulliam,	Wyatt—47.
Harrison,	Rhodes,	

NOES.

Andrews,	Herold,	O'Sullivan,
Barbour,	Holmes,	Porter,
Barry,	Howard, of Los Angeles,	Reed,
Beerstecher,	Howard, of Mariposa,	Ringgold,
Belcher,	Hughey,	Schell,
Biggs,	Jones,	Shoemaker,
Boggs,	Joyce,	Shurtleff,
Boucher,	Kelley,	Smith, of 4th District,
Campbell,	Kenny,	Smith, of San Francisco,
Caples,	Keyes,	Steele,
Casserly,	Laine,	Stevenson,
Chapman,	Larue,	Swing,
Cowden,	Lavigne,	Townsend,
Cross,	Lindow,	Tully,
Crouch,	Martin, of Alameda,	Turner,
Dowling,	McCallum,	Vacquerel,
Doyle,	McComas,	Van Dyke,
Eagan,	McCoy,	Van Voorhies,
Edgerton,	McFarland,	Walker, of Tuolumne,
Estee,	McNutt,	Waters,
Farrell,	Mills,	Weller,
Freud,	Nelson,	Wellin,
Garvey,	Neunaber,	Wickes,
Graves,	Noel,	Winans,
Hall,	Ohleyer,	Mr. President—75.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole as amended by the Convention.

The ayes and noes were demanded by Messrs. Wyatt, West, Evey Huestis, and Charles.

The roll was called, and the Convention refused to concur by the following vote:

AYES.

Barbour,	Hunter,	Neunaber,
Beerstecher,	Inman,	Noel,
Brown,	Joyce,	Ohleyer,
Condon,	Kelley,	O'Sullivan,
Cross,	Keyes,	Rhodes,
Davis,	Laine,	Ringgold,
Dudley, of Solano,	Larkin,	Rolfe,
Estee,	Larue,	Schomp,
Freeman,	Lavigne,	Shurtleff,
Freud,	Lewis,	Smith, of Santa Clara,
Hager,	Lindow,	Swing,
Herrold,	Mansfield,	Thompson,
Hitchcock,	McCallum,	Tuttle,
Holmes,	McComas,	Vacquerel,
Howard, of Mariposa,	McCoy,	Waters,
Hughey,	Moreland,	White—48.

NOES.

Andrews,	Gorman,	Shafter,
Ayers,	Grace,	Shoemaker,
Barry,	Graves,	Smith, of 4th District,
Barton,	Hale,	Smith, of San Francisco,
Belcher,	Hall,	Soule,
Bell,	Harrison,	Stedman,
Biggs,	Harvey,	Steele,
Boggs,	Heiskell,	Stevenson,
Boucher,	Hilborn,	Sweasey,
Burt,	Howard, of Los Angeles,	Swenson,
Campbell,	Huestis,	Tinnin,
Caples,	Jones,	Townsend,
Casserly,	Kenny,	Tully,
Chapman,	Kleine,	Turner,
Charles,	Martin, of Alameda,	Van Dyke,
Cowden,	McFarland,	Van Voorhies,
Crouch,	McNutt,	Walker, of Tuolumne,
Dean,	Mills,	Weller,
Dowling,	Moffat,	Wellin,
Doyle,	Morse,	West,
Eagon,	Nason,	Wickes,
Edgerton,	Nelson,	Wilson, of Tehama,
Evey,	Porter,	Wilson, of 1st District,
Farrell,	Pulliam,	Winans,
Filcher,	Reed,	Wyatt,
Garvey,	Schell,	Mr. President—78.

JUDGES INELIGIBLE TO OTHER OFFICES.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section eighteen.

THE SECRETARY read:

"SEC. 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment, during the term for which they shall have been elected."

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Concurred in.

CHARGING JURIES.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section nineteen.

THE SECRETARY read:

"SEC. 19. Judges shall not charge juries with respect to matters of fact, but may, except in criminal prosecutions for libel, state the testimony and declare the law."

MR. BARBOUR. I move that the section be stricken out.

THE PRESIDENT. Not in order. The same object will be accomplished by refusing to concur.

MR. BARBOUR. Mr. President: That section is entirely unnecessary, and will cause a great deal of trouble at one time or another. I find in no other Constitution, any attempt to control this matter. If the section is examined, it will be found that it may result in extreme confusion and unnecessary conflicts between the Court and attorneys, in regard to charging juries. It provides that the Court may not charge the jury upon matters of fact, but may state the testimony. Now, there is a partial contradiction of terms. It is not necessary to state the testimony, because all the Courts are now provided with reporters, who take down the testimony in shorthand. The statement of the testimony made by the Judge may not agree with the reporter's notes, and if this provision remains, his statement would have to prevail over the writer's notes, therefore I hope the Convention will refuse to concur.

THE PRESIDENT. The question is upon concurring.

The Convention refused to concur.

REPORTER OF DECISIONS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-one.

THE SECRETARY read:

"SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable quarterly."

MR. BARBOUR. Mr. President: I offer an amendment.

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THE SECRETARY read:

"Strike out the word 'quarterly,' and insert the word 'monthly.'"

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Barbour.

Adopted.

THE PRESIDENT. The question is upon the section as amended.

Adopted.

JUDGES PROHIBITED FROM PRACTICING LAW.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-two.

THE SECRETARY read:

"SEC. 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office."

The amendment of the Committee of the Whole was concurred in.

THE PRESIDENT. The question is upon concurring with the Committee of the Whole in striking out section twenty-three. The Secretary will read.

THE SECRETARY read:

"SEC. 23. A grand jury shall be composed of twelve jurors, and a concurrence of nine shall be necessary to the making of a presentment or the finding of an indictment."

The action of the Committee of the Whole was concurred in.

QUALIFICATIONS FOR JUDGES.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section twenty-four.

THE SECRETARY read:

"SEC. 24. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State."

MR. McCOY. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by striking out the words, 'or to the office of Judge of a Superior Court.'"

MR. McCOY. The reason I offer this is that in some counties they have no lawyers eligible to the office under this provision.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I shall support the amendment of the gentleman for the reason that, in a large number of counties in this State, it virtually declares who shall be Superior Judge. In quite a number of counties there is not to-day anybody eligible under this provision to the office of Superior Judge. I understand that in the County of Amador there is but one. I know of but two in El Dorado. There are many counties in this State where men are practicing law, who might be able to be admitted, but are not, and it is too far to go for that especial purpose. I believe that men who are holding the position of County Judge in many counties, are not eligible under this provision. I believe the people are the best judges as to the qualifications of their officers.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I hope the amendment will not prevail. I think we should have some protection against getting men upon the bench who are not qualified to discharge the duties. Men may contrive to get on the party tickets who are wholly unqualified for the place. I think the salaries are high enough, so that the best men in the county can afford to go on the bench—men of talent and ability. I think we should have some clause that will prevent scheming politicians from foisting men on the bench who are not fit for the place. If there are men who are qualified, but have not been admitted, they can easily go before the Supreme Court and be admitted; and if they cannot pass the examination they have no business on the bench. I hope, therefore, that the amendment will not prevail.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I do not see why this amendment should prevail. Every school teacher in the State has to be examined; every carpenter has to learn a trade; every blacksmith has to serve an apprenticeship before he can work; then why should these men be permitted to occupy these important positions, where life and property are entrusted in their keeping, unless they have learned their business. Let me say further, that under this Constitution the Superior Judges of the State will have to pass upon questions that will necessarily go to the Supreme Court for its consideration. All important questions affecting life and property will have to go there, and I hope we will throw around that office safeguards that are necessary to secure able and competent men. If there are counties where none of the attorneys have been admitted, let them do as other attorneys have done, go to the Supreme Court and be examined. I hope that the motion to strike out will not prevail.

MR. TINNIN. I hope it will be adopted. The section as it stands now is nothing but a premium on carpet-baggers. In many counties there are eminent lawyers who are well qualified to discharge the duties, who do not deem it proper to come to Sacramento to be examined for admission to the Supreme Court. If the people of the counties are satisfied, I don't see why this Convention should object to it. I am opposed to this system of close corporations.

MR. HOWARD. If it were in order, I would move to strike out the word "lawyer," and insert "cobbler."

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: Allow me to say one word in reply to the gentleman from Trinity. If there is any lawyer who aspires to the position of Superior Judge, if he cannot pass an examination before the Supreme Court, he is not fit for the position. I agree with the gentleman from Santa Cruz on that point. I do not suppose the gentleman would be willing to trust his life in the hands of a doctor unless he was a regularly licensed physician. I believe the dignity of the profession requires that every man should be admitted. If he is not competent to pass that examination, he is not fit to become a Superior Judge. I hope this motion will be voted down. The gentleman says, if the people want to elect an incompetent man, that is their look out, and we have nothing to do with it. I say not. It is a matter in which every citizen of this State is interested. He is paid out of the State treasury, in part, and every citizen in this State has a right to go into that Court and have his claim settled. It is not confined to the immediate county. It is an outrage upon decency to strike out this qualification.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I do not expect to be a candidate for Superior Judge; therefore, I have no personal interest in this matter. But from my personal experience, I will say that it would be very injudicious to strike out these words. In the first place, there is no exclusive privilege granted, for there is no member of the community who cannot become a licensed lawyer if he choose to turn his attention that way; therefore, these positions are open to the whole State. But, before a man should be allowed to occupy the position, he should have devoted himself to the profession, and have risen, as other men have, to the proper point. Suppose you allow any citizen in the county to become a Judge. Why, it would not be whether he is the best qualified man for the place, but rather, whether he is the most skillful politician. Now, I don't know whether my friend Tinnin is a lawyer or not, but he is a popular politician, and if he wanted the Judgeship he could get it, whether qualified for the position or not. Now, I would ask him him, whether, when he goes to build a bridge, he takes an engineer or not? If you go into a mining enterprise, would you employ a competent miner or not? If you are going to build a house, would you hire a carpenter, or somebody who knows nothing about it? The man who occupies the position of Superior Judge has civil cases and criminal cases to try. He may have very important cases with regard to private property. He may decide such a case, and it will be reversed. He decides it again, and it is reversed again; because he makes some error for want of knowledge. A man may be on trial for his life. It is a very serious matter, and a man should know something of criminal law in order to deal out justice. Why not take men who are versed in the law, instead of men who know nothing about it? It is a question too plain for argument.

THE PRESIDENT. The question is on the motion to strike out.

Lost.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Carried, and the section concurred in.

MR. BIGGS. Mr. President: I wish to offer a new section.

THE SECRETARY read:

"SEC. —. No Judge of a Superior Court, nor of the Supreme Court, shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive his monthly salary unless he shall take and subscribe an oath, before the disbursing officer, that no cause in their respective Courts remain undecided that has been submitted for decision for the period of sixty days."

MR. BIGGS. Mr. President: I offer that in the interest of economy, and to correct an evil which has been felt all over this State. It has been the custom for Courts to keep cases under advisement as long as two years at a time. This section is right, and the people demand it.

MR. TULLY. Suppose the Judge gets sick.

MR. BIGGS. Then he don't draw any pay.

MR. MORELAND. Do you want every Judge in this State to come up and take an oath?

MR. BIGGS. That has been adopted in many of the States. It is right. It is a great protection. I am willing to make it three months. But there ought to be some limit. As it is now there is no remedy whatever.

MR. HOWARD, of Los Angeles. Suppose he has it in hand sixty days and does not yet understand it?

MR. BIGGS. Then he had better resign, if he cannot understand it in sixty days.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: I was requested by one of the oldest Judges of San Francisco to offer just such a proposition as this. A provision of this character is very desirable in this Constitution, as it gives to all litigants the right to a speedy decision. This will be in the interest of poor litigants. Rich litigants can stand the delay, but it is a great hardship on poor men. The demand for a provision of this character is very general, and I hope it will be adopted. It is a notorious fact that some of the Judges have held their decisions for years.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: I offered an amendment upon this subject which will be found in the Journal. It properly belongs to article three of the Constitution, under the head of distribution of powers. It provided that the Legislature might prescribe conditions as to the time in which cases should be decided. I thoroughly sympathize with the object which the gentleman has in view, though I do not believe this is the place for it. I don't think it is within the dignity of the Constitution to express it in that manner. It does not appear in any of the other Constitutions in that shape. It belongs in article three of the Constitution.

MR. ESTEE. Suppose the Judge is sick?

MR. McCALLUM. My amendment simply provides that the Legislature may prescribe conditions upon which cases shall be decided within

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a limited period of time. It leaves it to the Legislature. The details of the matter should be left to the Legislature.

MR. EDGERTON. Suppose the Judge is sick three years. I suppose the theory of this proposed section is that the interests of the public demand it, and if he is sick three months or five months, and the public interests are suffering, that he ought to resign. I know there has been an immense amount of oppression practiced, involving an outrageous delay of justice. It has prevailed to a most extraordinary extent all over the State. It seems to me this is the proper place for a provision of this kind. There ought to be something of the kind, but whether sixty, or ninety, or one hundred days, I cannot say. I would ask the gentleman to make it one hundred, or one hundred and twenty days.

MR. BIGGS. I have made it ninety days.

THE PREVIOUS QUESTION.

MR. HOWARD, of Los Angeles. Mr. President: I move the previous question.

Seconded by Messrs. West, Wyatt, Sweasey, and Lampson.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the proposed new section offered by the gentleman from Butte, Mr. Biggs.

The ayes and noes were demanded by Messrs. Biggs, Grace, Brown, Doyle, and White.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Hall,	Ohleyer,
Ayers,	Harrison,	O'Sullivan,
Barbour,	Harvey,	Pulliam,
Barry,	Heiskell,	Reed,
Barton,	Herold,	Rhodes,
Beerstecher,	Hilborn,	Ringgold,
Belcher,	Hitchcock,	Rolfe,
Bell,	Holmes,	Schell,
Biggs,	Howard, of Los Angeles,	Schomp,
Boggs,	Howard, of Mariposa,	Smith, of Santa Clara,
Boucher,	Huestis,	Smith, of 4th District,
Brown,	Hunter,	Smith, of San Francisco,
Burt,	Inman,	Soule,
Campbell,	Joyce,	Stedman,
Casserly,	Kelley,	Steele,
Chapman,	Kenny,	Stevenson,
Charles,	Kleine,	Sweasey,
Condon,	Laine,	Swenson,
Cross,	Larkin,	Swing,
Crouch,	Larue,	Thompson,
Davis,	Lavigne,	Tinnin,
Dean,	Lewis,	Tully,
Dowling,	Lindow,	Turner,
Doyle,	Mansfield,	Tuttle,
Dudley, of Solano,	Martin, of Alameda,	Vacquerel,
Edgerton,	McCallum,	Van Dyke,
Estey,	McComas,	Van Voorhies,
Evey,	McCoy,	Walker, of Tuolumne,
Farrell,	McNutt,	Waters,
Filcher,	Mills,	Weller,
Freeman,	Moffat,	Wellin,
Freud,	Moreland,	West,
Garvey,	Morse,	Wickes,
Gorman,	Nason,	White,
Grace,	Nelson,	Wilson, of Tehama,
Graves,	Neunaber,	Winans,
Hager,	Noel,	Wyatt—111.

NOES.

Cowden,	Porter,	Shurtleff,
Eagon,	Shafter,	Wilson, of 1st District,
Hale,	Shoemaker,	Mr. President—10.
McFarland,		

MR. McCALLUM. Mr. President: Before the article is engrossed, I wish to offer an amendment to section seventeen. It is the same amendment which I offered in Committee of the Whole.

THE PRESIDENT. It is not in order.

MR. McCALLUM. Not in order?

THE PRESIDENT. No, sir; not in order. The previous question was ordered, and it cannot be amended now.

MR. McCALLUM. The previous question was not on that section at all.

MR. WEST. Do I understand the Chair to decide that the original section seventeen cannot now be amended?

THE PRESIDENT. The Chair so decides.

MR. WEST. Then I hope the article will be voted down.

NOTICE.

MR. KEYES. I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention refused to adopt the amendment offered by Mr. McCoy to section twenty-four; also, the vote by which the recommendation of the Committee of the Whole to section twenty-four was adopted.

MR. BARBOUR. Mr. President: I now move to strike out section nineteen.

MR. WEST. I move the Convention do now adjourn.

No second.

THE PRESIDENT. The question is upon the motion to strike out section nineteen.

MR. McCALLUM. That section as it now reads is the section as it now stands in the present Constitution. I don't believe it is safe to strike it out.

MR. EDGERTON. If that is stricken out the old common law rule will prevail, that Judges may charge the jury and state the facts. That is the effect of it.

MR. McCALLUM. That is the Constitution as it now stands.

MR. EDGERTON. It would give the Judge arbitrary power over the jury as to facts or anything else.

MR. McCALLUM. It has stood in this State for twenty-nine years.

MR. SHAFTER. I hope we will retain that section.

MR. BARBOUR. I suppose gentlemen understand what they are doing, but, in my opinion, in order to make the thing harmonious, and avoid confusion and conflicts between the Court and the attorneys, it will be necessary to strike it out.

MR. WINANS. I move we do now adjourn. It is too late to discuss it now.

The ayes and noes were demanded by Messrs. Howard of Los Angeles, McCallum, Nelson, Gorman, and West.

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

AYES.

Barton,	Kelley,	Rolfe,
Burt,	Keyes,	Schomp,
Dowling,	Kleine,	Shoemaker,
Eagon,	Larue,	Stedman,
Estee,	Lavigne,	Steele,
Filcher,	Lewis,	Sweasey,
Garvey,	Lindow,	Thompson,
Grace,	Martin, of Alameda,	Tinnin,
Graves,	McNutt,	Vacquerel,
Hager,	Moreland,	Van Voorhies,
Hale,	Nason,	Walker, of Tuolumne,
Hall,	Neunaber,	West,
Harvey,	Noel,	Wickes,
Heiskell,	O'Sullivan,	Wilson, of Tehama,
Hilborn,	Porter,	Winans,
Hitchcock,	Pulliam,	Wyatt—50.
Inman,	Rhodes,	

NOES.

Andrews,	Evey,	Ohleyer,
Ayers,	Farrell,	Reed,
Barbour,	Freeman,	Ringgold,
Barry,	Freud,	Schell,
Beerstecher,	Gorman,	Shafter,
Belcher,	Harrison,	Shurtleff,
Bell,	Herold,	Smith, of Santa Clara,
Boggs,	Holmes,	Smith, of San Francisco,
Boucher,	Howard, of Los Angeles,	Stevenson,
Brown,	Howard, of Mariposa,	Swenson,
Caples,	Hunter,	Swing,
Casserly,	Joyce,	Tully,
Chapman,	Kenny,	Turner,
Charles,	Laine,	Tuttle,
Condon,	Larkin,	Van Dyke,
Davis,	Mansfield,	Waters,
Dean,	McCallum,	Wellin,
Doyle,	McComas,	White,
Dudley, of Solano,	Morse,	Wilson, of 1st District,
Edgerton,	Nelson,	Mr. President—60.

THE PRESIDENT. The question is on the motion to strike out section nineteen.

MR. LAINE. Mr. President: I hope that motion will not prevail. It is the provision of the old Constitution which has stood for twenty-nine years.

MR. WILSON, of First District. I hope it will not be stricken out.

The motion to strike out was lost.

NOTICES OF RECONSIDERATION.

MR. CAMPBELL. I give notice that to-morrow I will move to reconsider the vote by which the Convention refused to concur in the amendment adopted by the Committee of the Whole to section nineteen.

MR. VAN DYKE. I give notice that I will to-morrow move to reconsider the vote by which the Convention refused to concur in the amendment to section seventeen.

MR. O'SULLIVAN. Mr. President: I offer an amendment to section sixteen.

THE SECRETARY read:

"Strike out all after the word 'and,' in the second line, and insert the following: 'The work shall be done in the State printing office.'"

Lost.

MR. MORELAND. I move that we now adjourn.

Lost.

MR. HILBORN. Mr. President: I offer an amendment to section fifteen.

THE SECRETARY read:

"Amend section fifteen by striking out, after the word 'except,' in first line, the following words: 'Justices of the Peace.'"

MR. HILBORN. Mr. President: The object of this is to place all judicial officers upon an equality. It is to put Justices of the Peace upon salary. This is one of the most important reforms we can adopt, as gentlemen will find out. It is the same amendment which I suggested in Committee of the Whole.

MR. TINNIN. I move to adjourn.

Lost.

The amendment was rejected.

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THE PREVIOUS QUESTION.

MR. WATERS. Mr. President: I move the previous question upon the engrossment of the article.

Seconded by Messrs. Brown, Doyle, Schell, and Dudley of Solano.

THE PRESIDENT. The question is: Shall the main question be now put?

Upon the question of ordering the main question put, the ayes and noes were demanded by Messrs. Keyes, Grace, Doyle, Schell, and West.

The roll was called, and the main question ordered by the following vote:

AYES.

Andrews,	Holmes,	Pulliam,
Ayers,	Howard, of Los Angeles,	Reed,
Barry,	Howard, of Mariposa,	Ringgold,
Beerstecher,	Hunter,	Schell,
Belcher,	Inman,	Shafter,
Boucher,	Laine,	Shoemaker,
Brown,	Larue,	Smith, of Santa Clara,
Casserly,	Lindow,	Stevenson,
Chapman,	Mansfield,	Sweasey,
Charles,	McCallum,	Swing,
Dudley, of Solano,	McComas,	Thompson,
Edgerton,	McNutt,	Tully,
Estee,	Mills,	Turner,
Farrell,	Morse,	Van Voorhies,
Freeman,	Noel,	Walker, of Tuolumne,
Garvey,	Ohleyer,	Waters,
Graves,	O'Sullivan,	Wilson, of 1st District,
Heiskell,	Porter,	Mr. President—55.
Hilborn,		

NOES.

Barbour,	Hale,	Rhodes,
Bell,	Hall,	Rolfe,
Biggs,	Harrison,	Schomp,
Burt,	Harvey,	Shurtleff,
Campbell,	Herold,	Smith, of San Francisco,
Condon,	Hitchcock,	Stedman,
Cowden,	Joyce,	Steele,
Davis,	Kenny,	Swenson,
Dean,	Keyes,	Tinnin,
Dowling,	Kleine,	Tuttle,
Doyle,	Larkin,	Vacquerel,
Eagon,	Lavigne,	Van Dyke,
Evey,	Lewis,	Wellin,
Filcher,	McCoy,	West,
Freud,	Moffat,	Wickes,
Gorman,	Moreland,	White,
Grace,	Nelson,	Wilson, of Tehama,
Hager,	Neunaber,	Wyatt—54.

THE PRESIDENT. The question is: Shall this article be engrossed and read a second time?

The ayes and noes were demanded by Messrs. Tinnin, West, Evey, Lewis, and Hitchcock.

The roll was called, and the Convention refused to order the article engrossed by the following vote:

AYES.

Ayers,	Hilborn,	Rolfe,
Barry,	Holmes,	Schell,
Beerstecher,	Howard, of Los Angeles,	Shafter,
Belcher,	Hunter,	Shoemaker,
Boucher,	Larue,	Stevenson,
Brown,	Lindow,	Sweasey,
Burt,	Mansfield,	Swing,
Campbell,	McComas,	Thompson,
Chapman,	Mills,	Tully,
Charles,	Morse,	Van Dyke,
Eagon,	Nelson,	Van Voorhies,
Estee,	Noel,	Walker, of Tuolumne,
Freeman,	Ohleyer,	Waters,
Garvey,	O'Sullivan,	White,
Graves,	Porter,	Wilson, of 1st District,
Harvey,	Pulliam,	Mr. President—50.
Heiskell,	Reed,	

NOES.

Andrews,	Hager,	Moreland,
Barbour,	Hale,	Rhodes,
Bell,	Hall,	Ringgold,
Biggs,	Herold,	Schomp,
Caples,	Hitchcock,	Shurtleff,
Casserly,	Howard, of Mariposa,	Smith, of Santa Clara,
Condon,	Inman,	Smith, of San Francisco,
Cowden,	Joyce,	Stedman,
Davis,	Kenny,	Steele,
Dean,	Keyes,	Swenson,
Dowling,	Kleine,	Tinnin,
Doyle,	Laine,	Turner,
Dudley, of Solano,	Larkin,	Tuttle,
Edgerton,	Lavigne,	Vacquerel,
Evey,	Lewis,	Wellin,
Farrell,	McCallum,	West,
Freud,	McCoy,	Wickes,
Gorman,	McNutt,	Wilson, of Tehama,
Grace,	Moffat,	Wyatt—57.

MR. FILCHER [when his name was called]. Can we reconsider if the Convention refuses to engross it?

THE PRESIDENT. The Chair will decide that at the proper time.

MR. FILCHER. I refuse to vote.

NOTICE.

MR. McCALLUM. I give notice that I will, to-morrow, move to reconsider the vote by which the Convention refused to order the article on judiciary engrossed and read a second time.

ADJOURNMENT.

MR. SHOEMAKER. I move that the Convention do now adjourn.

Carried.

And at five o'clock and fifty-five minutes P. M., the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND THIRTY-NINTH DAY.

SACRAMENTO, Thursday, February 13th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Gregg,	O'Donnell,
Berry,	Hale,	Overton,
Blackmer,	Johnson,	Prouty,
Dudley, of San Joaquin,	Lampson,	Reddy,
Dunlap,	Martin, of Santa Cruz,	Stuart,
Eagon,	McConnell,	Terry,
Estey,	Miller,	Walker, of Marin,
Fawcett,	Murphy,	Webster.
Finney,		

THE JOURNAL.

MR. EVEY. Mr. President: I move the reading of the Journal be dispensed with, and the same approved.

So ordered.

MEMORIAL TO CONGRESS.

Mr. REYNOLDS. Mr. President: I call for the reading of the special order.

THE SECRETARY read:

WHEREAS, A certain bill is now pending before Congress, purporting to grant forty-five thousand acres of land to the University of California, in excess of the one hundred and fifty thousand acres granted to endow a College of Agriculture; and whereas, the Regents, members of this Convention, assert that the Regents have asked for the passage of no such bill, and that it is neither directly nor indirectly in the interest of the University; and whereas, grants of land made in the manner proposed by said bill only afford land monopolists opportunities to rob the public domain of lands which ought to be granted only to actual settlers and in limited quantities; therefore,

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Resolved, By the Constitutional Convention of the State of California, now in session, that Congress be and is hereby respectfully but earnestly memorialized to refuse to pass said bill, to the end that whatever remains of the public domain may be retained for the use of those who will settle upon and improve it.

Resolved, That these resolutions be printed, and a copy, signed by the President and Secretary, be sent without delay, to each of our Senators and Representatives in Congress.

MR. REYNOLDS. Mr. President: But few words are necessary in explanation of these resolutions and the reasons why they should pass. Under Act of Congress, July, eighteen hundred and sixty-two, the State became entitled to one hundred and fifty thousand acres of land, for the benefit of a college of agriculture and mechanic art. How that grant became transferred to the University of California it is not necessary here to relate, only to prove the fact that it was done. Nearly all of that grant has been listed to the State of California, and by the Regents, sold. How much more than the one hundred and fifty thousand acres has been disposed of by the University I am not prepared to say, but that the University has claimed nearly thirty-nine thousand acres in excess of the one hundred and fifty thousand acres granted, appears by the official letter of the Hon. James A. Williamson, Commissioner of the General Land Office, to the Register of the Land Office, in San Francisco, September twenty-eighth, eighteen hundred and seventy-eight. That letter was in reply to the inquiries by the Register of the Land Office at San Francisco. From this it appears that an application had been made to the Register at the Land Office, at San Francisco, and by him rejected. It was then referred to the Commissioner of the General Land Office, and this letter was in reply. Two points were raised, one was in relation to the compliance or non-compliance with the Act of Congress, and the other was in relation to the fact that the State had already applied for an amount largely in excess of the grant. The first point was overruled, and the second point was considered well taken, and the action of the Register sustained in the following words:

> There is, however, another good reason for the rejection of these applications, namely: That the State has already selected lands largely in excess of the amount to which she is entitled by law. From an examination of the list now on file in this office, it is found that there have already been selected in satisfaction of this grant one hundred and eighty-eight thousand seven hundred and eighty acres and seventy-three one hundredths, or thirty-eight thousand seven hundred and eighty and seventy-three one hundredths acres in excess of the amount to which the State is entitled by law. On this ground the said applications should be and the same are hereby rejected.
>
> J. A. WILLIAMSON, Commissioner.

That letter was dated September twenty-eighth, eighteen hundred and seventy-eight, the day on which this Convention met. That is all the official information we have concerning the matter. As I before remarked, how much land the Regents of the University have sold I do not know. But here it officially appears that the Regents have made application for nearly thirty-nine thousand acres in excess of the grant. The next that appears concerning this matter, so far as my information goes, is in the following telegram:

> WASHINGTON, January 27th.—The bill for the relief of the California State University, introduced to-day by Booth in the Senate and Davis in the House, is a measure presented at the request of the University, and with the approval of the Commissioner of the General Land Office, which, in brief, allows the University, through the State authorities, to surrender to the United States the lands hitherto selected and disposed of by the University Regents, but thrown back on their hands by the purchasers; and provides for giving them a title to an equal number of acres out of the subsequent selections in excess of the total to which the University was entitled under the Agricultural College grant. James W. Shanklin, the University Land Agent, is here to promote the passage of this bill.

There are two bills now pending before Congress for the relief of the University. One is entitled the Booth bill, and the other is entitled the Davis bill. What the Booth bill is for, it is not necessary here to inquire. The Davis bill is for the purpose of granting to the University forty-five thousand acres of land in excess of the grant of one hundred and fifty thousand acres, so far as our information goes. That bill, which, as it is here related, was introduced in the Senate by Booth and in the House by Davis on the same day, is the Davis bill, and is the bill at which these resolutions are aimed. It is hardly necessary to speculate upon the reasons which induced the Commissioner of the Land Office to change his opinion, and after rejecting the claim of the State to this thirty-nine thousand acres in excess of the grant, to recommend the passage of this bill before Congress. What his reasons are I do not know. I did not know until very recently that the Regents were asking for the passage of this Davis bill. I understand now that the Regents disclaim any relation to that bill at all; disclaim any paternity of it, or any wish that it should pass. I am glad to ascertain that that is the fact, but it does seem to me that their opposition to the bill, feeble as it is, comes at a very late day. It is a pertinent inquiry, when it appears by the report of the Surveyor-General, made to this body early in the session—on October twenty-seventh, eighteen hundred and seventy-eight—that there had been actually listed to the State for the University one hundred and forty thousand seven hundred and fifty-nine and ninety-two one hundredths acres. By the official letter of the Commissioner of the Land Office, it appears that the Regents have already selected thirty-eight thousand seven hundred and eighty and seventy-three one hundredths, or nearly thirty-nine thousand acres, in excess of the grant to which the State is entitled. On this point there are conflicting statements likewise. Mr. A. S. Hallidie, who was but recently ex officio one of the Regents, makes public a letter, under date of January twenty-fourth, in which he states that there is but five thousand seven hundred and nine acres not listed or sold on account of Congressional Act, so there is a discrepancy between the report of the Surveyor-General and the statement of Mr. Hallidie, one of the Regents. It would appear from one that there is about nine thousand acres yet remaining, and from the other but about five thousand. However that may be, it is immaterial to the issue presented by these resolutions. These resolutions are aimed at the bill which seeks to grant forty-five thousand acres in excess of the one hundred and fifty thousand acre grant. It is that against which these resolutions protest. I am in favor of these resolutions, and opposed to the granting of any special grant to the University, or to any other purpose under the sun. Not that I have any opposition towards the University——

THE PRESIDENT. The gentleman's ten minutes have expired.

MR. WINANS. Mr. President: I think it would have been more manly, and I am sure it would have been more definite, if the gentleman had distinctly arraigned the Regents for malfeasance, or misfeasance, or wrong in some shape or other, than to have merely indulged in incidental insinuations. The gentleman says that their opposition to this bill comes with a feeble effort even at this late day. Their opposition to the bill came when they were asked to present it, or take means for its presentation to Congress. There are two bills in Congress. One is the Booth bill, and that the Regents approve. That was presented at their instance, and that means simply this: that, whereas, in the first place, they made a selection of lands for themselves, to the extent of a large number of acres under the administration of their first land agent, and these lands proved to be entirely worthless, and unreceivable for the purposes of the grant; and, whereas, they had not received, nor been enabled to enjoy the fruits of the one hundred and fifty thousand acres, but fell short to the extent of over twenty thousand acres of fruition of that grant, they therefore appealed to Congress to aid them and to give them the benefit that the grant was designed to give, but of which they had been deprived by unaccountable circumstances, involving no wrong on their part. That is the Booth bill. It is to give them the amount of land that they should have. Although they received applications for a larger amount than one hundred and fifty thousand acres, yet that course was necessary in the pursuit of their business; because, on the one hand the applicants took the chances of coming within the one hundred and fifty thousand acres; and on the other hand, the necessity of making the application arose, because, if they had waited until they could get the one hundred and fifty thousand acres, years upon years would have elapsed before they could have realized the results of their sales. Their business was conducted upon a strictly business plan, and as a financial scheme, involving the highest degree of merit and success. As regards the other bill, in regard to which our opposition comes with a feeble effort at this late day, the bill itself is a recent creation of men who are seeking to use the University as a means to accomplish private ends, and the gentleman who challenged us as having made a feeble effort at a late day had just as much opportunity to learn about the bill as we had, and knows just as much about it. The bill itself is of recent origin, and it is something of which we have nothing to do. We have no lot nor part in the matter. The men who are engineering that bill applied to the Regents to give an acquiescence, and the Regents refused to act. The men then went forward—among them one Nourse—in their own private interests, and introduced the bill. The gentleman who institutes this investigation declares that the Regents, members of this Convention, assert that they have not asked for the passage of this bill. Why, then, if they assert that, and no one asserts to the contrary, does he deal in innuendo and aspersion? Why does he stab in the dark? Why, if he has anything to say against the Regents, does he not come out and point out where they have done wrong? I dislike this method of dealing with questions by innuendo. I dislike insinuations. Now, sir, I have explained this matter as fully as I could, and as fully as we who are Regents here are informed about. We are entitled to our land, and we will get it if Congress chooses to be equitable and just.

MR. ESTEE. Mr. President: I think neither of the gentlemen have hit upon the exact object of the bill. I have occasion to know what the point is. There have been certain surveys made in different parts of the State, and particularly one in Contra Costa County. The survey was made at a time when the settlers and those who had lived there for many years, and owned what they supposed was a grant title, were perfectly uninformed upon the subject. I refer now to the one back of San Pablo. The first thing they knew they found that the survey had been made, and covered a large portion of the land claimed under a grant title by people who had lived there twenty or thirty years. Of course the people went immediately to look into the title, and found it to be covered with University scrip. Now I understand that this bill would validate the claim to that forty-five thousand acres, and with it the Regents of the University, as I understand, have no more to do than a child unborn. If I am correctly informed, and I get my information from people who live on that grant, and whose homesteads will be imperiled, the members of Congress had nothing to do with it. They supposed they were serving the State. But this bill would give validity to that class of scrip, and it would take from these people their homes. Now some of these settlers came to my office last Saturday, when I was down, and presented this matter, and I have stated the facts here as I understand them. I believe, therefore, while I do not think we are here to pass such resolutions, that it would be in the interest of public justice to adopt these resolutions; but for this reason and nothing more. I do not think the Regents know anything about it. They are merely using the Regents' names to pull chestnuts out of the fire, whereby some men can get rich.

MR. INMAN. Mr. President: I simply want to corroborate what Mr. Estee states to be the fact. I know it to be a fact. I have lived in Contra Costa County many years. My father-in-law was one of the men who live upon that grant. He and his family live upon that land to-day, and have been occupying it for twenty-nine years with many of their neighbors. Last Spring this land was surveyed and they went to the land office to file upon these lands and found that it was located upon by some one scrip. If this forty-five thousand acre bill passes, and this scrip is made good, it will simply rob these people out of their homes. I have talked with Mr. Martin and other Regents, and I am satisfied that they knew nothing about it. It is undoubtedly gotten up by some land sharps to carry out their evil designs. I say it is the duty

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of this body to enter its protest now and stop this highway robbery. It is what people condemn and have a right to denounce. I denounce it as a high-handed robbery. I can look at it in no other light.

MR. MARTIN, of Alameda. Mr. President: At one of the regular sessions of the Board of Regents this matter was under consideration. It was presented to them formally by Mr. Nourse, who is the author of the bill, and who represents certain parties who want to obtain University titles to cover certain lands. The Regents had this matter under consideration, and after full and mature deliberation, determined not to recognize it in any shape or form. I suppose that Mr. Nourse, or some other gentleman in the interest of the parties that he represented, went to Washington for the purpose of introducing this bill in the name of the University. The University is not responsible for it, does not recognize it in any shape, and will not indorse it. But, Mr. President, there are other matters in connection with this resolution. I do not indorse everything that this memorial contains. There is a bill before Congress in which the University is interested, and this memorial might be taken to refer to that. I am in favor of that bill, not because it would take lands from parties who occupy them—and that cannot be done if the law is complied with—but simply because I am working for the University. I am there for the purpose of administering this trust, or any other of a beneficial character to it, and for that reason I might favor an additional grant of land to the University. But upon this proposition to-day before this Convention, if it comes to a vote, I shall vote in opposition to it because I believe it will prejudice the interests of the University now before Congress, with reference to the lands that properly belong to the University.

The reason why the Regents are before Congress at all is simply this: that from eighteen hundred and sixty-two up to eighteen hundred and sixty-eight not one acre of land was sold that belonged to the University grant. It was in the charge of the State. No application had been made for it. A law was then passed by the Legislature placing this grant in the hands of the Regents for their administration. A law of Congress was made giving them the privilege to go into the railroad belt to locate their lands. In eighteen hundred and sixty-one an Act was passed giving them the privilege to locate upon unreserved lands. It was under these laws that the University effected the sales that they have now already made. I stated before when I addressed this Convention with reference to these lands, that the University had sold actually one hundred and thirty-two thousand one hundred and thirty-one acres of the one hundred and fifty thousand acres granted. I reiterate that as the truth, from official documents furnished me upon this floor. I know this to be correct, sir, and the excess that is spoken of here, of thirty-eight thousand acres, is simply on applications that the Regents granted from time to time. This had to be done in order in any way to get rid of the grant. This grant would not have been sold in fifteen or twenty years, had it not been for the mode and manner of administration adopted by the Regents. I have before me now a statement which will show the manner in which these applications have been made, the number, and the extent of them:

Statement of Applications made by the Regents of the University to United States Registers, from 1868 *to August* 24, 1878.

YEARS.	Number of acres applied for.	Number of acres rejected.	No. of acres accepted by U. S. Registers.	Number of acres in conflict.	No. of acres no action by U. S. Registers.
1868 and 1869	25,989	16,789	9,200	----------	----------
1870 and 1871	249,025	220,852	27,853	320	----------
1872 and 1873	88,356	19,784	64,448	480	3,644
1874 and 1875	39,897	6,648	33,249	2,210	----------
1876 and 1877	16,358	5,232	11,126	302	----------
1878	16,125	240	560	----------	15,325
Totals	435,750	269,545	146,436	3,312	18,969

I say that when these are closed the University will still have additional lands to sell. It has not sold one acre over its grant. It has twenty thousand acres to sell. The reason why we are before Congress is simply this, that between eighteen hundred and sixty-two and eighteen hundred and sixty-eight, no lands had been sold that belonged to the University grant. The Regents found that the land was being taken up all over the country, and they sent out agents to locate. They located certain lands that are worthless for the purposes of the University. That is why we are before Congress. It is good land for one dollar and twenty-five cents an acre, but it is not good land for six dollars and twenty-five cents an acre. Then we have other lands that have been applied for in regular form. These lands were forfeited by the applicants. We are in the land business, and we simply wish to get rid of these lands. These four hundred and thirty-five thousand acres were applications in contest in the land office, and in some cases other parties got them. That is the position we occupy to-day. In reference to Mr. Williamson, I called upon him when he was here. He did not understand our grant. He knew nothing about it. He simply took such information as he derived from the gentlemen who are now manipulating this matter in Washington. He indorses the proposition that the Regents have before Congress to-day. So far as the Regents are concerned, in reference to this matter, I have a telegram here which was sent to Washington on January twenty-fourth by our land agent, informing Mr. Shanklin that the Regents were in no way committed to the forty-five thousand acre bill. I have also a letter in response to it from Mr. Shanklin, dated January twenty-eighth, and inclosing a copy of the Booth bill, entitled a bill for the relief of the University of California. It was introduced on the twenty-seventh of January, and is numbered one thousand seven hundred and fourteen. [The speaker read the bill.]

MR. WILSON, of First District. Mr. President: This matter is of some importance, and it strike me that the preamble as now presented is not expressed exactly as this Convention ought to express it. It seems to me to imply a condemnation, and I think it would be better for this Convention to appoint a committee to report speedily upon this subject a proper memorial and resolution to be sent. I therefore move that the whole subject-matter be referred to a special committee to examine and report to the Convention resolutions to be sent to our Representatives in Congress in such form as the Convention may approve. I request, at the same time, that I may not be on the committee. I do not want to be Chairman of it for I do not understand the subject, and there are gentlemen here better able than myself.

MR. HAGER. Mr. President: I will second the motion of Mr. Wilson. I do not think the resolution is in the shape that it should be. I will briefly state, so far as I know, that there are two bills, as has been explained, pending in Congress. One is indorsed by the University and the other by private parties, about whom the University Regents know nothing. They have telegraphed that it is not their bill, and they do not wish it passed. That was done some time ago. Now, then, Mr. Martin has a copy of the bill which is indorsed by the Regents. Some years ago, the University employed agents to make selections of land, under this one hundred and fifty thousand acre grant, for the University. They made three selections. Well, it turns out that a great many of these lands are waste lands, good for nothing. The University could not sell them, and the bill that we have sent on and indorsed in Congress, is to release us from these locations. The object is to restore to the public domain the lands which were located by these agents, Colonel Jack Hayes, and others, and that the Regents be allowed to take other lands that they can avail themselves of to a better advantage and sell to a better advantage to the University. Here is a report from the State Land Commissioner of the State of California, in which this language occurs: "The management and disposal of the lands in this grant appear to have been conducted wisely and well, and the Land Agents of the University appear to have no trouble in selling their land at five dollars an acre, during the same period of time in which the State is selling sixteenth and thirty-sixth sections of indemnity land at one dollar and twenty-five cents an acre, and upon the same terms of payment." It goes on to state that the expense attending the sale of her lands is much greater than that of the University. That was a report made to the Legislature by a committee appointed in regard to the matter, and with which the Regents had nothing to do at all. Now, we do not know what this other bill is, we are not in possession of it, and I think it is necessary that there should be a committee appointed to inquire into this matter. Let us have the facts before us before we act.

MR. REYNOLDS. Have you a copy of the Davis bill?

MR. HAGER. We have nothing to do with that at all.

MR. WINANS. The Regents have no copy of it, and have never seen it.

MR. BEERSTECHER. Mr. President: I hope that the motion to postpone the consideration of this subject, or to appoint a committee, will not prevail, unless that committee be instructed to report immediately. We have had committees appointed who have taken weeks, yea, have taken months, and some of them have not reported at all as to the subjects submitted to their consideration. If this matter is to be acted upon at all by this body, it should be acted upon immediately, because Congress may, at any moment, take action in the matter, and then it is too late. If the matter is considered, and the resolutions are passed, whether they be the Reynolds resolutions, or any other resolutions, it will take one week for the resolutions to go from here to the City of Washington. We have no time to lose, sir. Mr. President, these bills, or at least the Nourse bill, is a bill gotten up for the purpose of unsettling land titles in this State, and for the purpose of making rich litigation for somebody. Two bills have been introduced in Congress, one called the Booth bill, and the other called the Nourse bill. The most iniquitous of the two is the Nourse bill; it seeks to obtain forty-five thousand acres of land under the plea that it is for the University of California. It does not stop there. By its provisions, it confirms all locations that have been made on school lands.

MR. MCFARLAND. Mr. President: I rise to a point of order. There is nothing before this Convention. The matter of memorializing Congress as to what it shall do, is a matter not germane to the business or purposes of a Constitutional Convention. The purpose of this body is to make a Constitution, and not to memorialize Congress about what it shall do.

THE PRESIDENT. The point of order is not well taken. The Convention has made these resolutions the special order.

MR. BEERSTECHER. It further confirms locations that have been made under lieu certificates and school lands. As is well known by persons connected with land matters in this State, certain sections were granted as school sections, and where these sections fall within Spanish grants, the Government issues lieu certificates. A contest was waged a number of years, in regard to lands in the Los Positos grant, in Livermore Valley; they undertook to locate their lieu certificates, and after a contest of years, the settlers succeeded in securing their title rights. But this bill gives the parties who have located under lieu certificates, the absolute right and title to the lands, whether they be within the boundaries of Mexican grants or not.

MR. CASSERLY. Is the gentleman speaking now to the Nourse bill?

MR. BEERSTECHER. Yes.

THE PRESIDENT. The gentleman must confine himself to the question before the Convention.

MR. BEERSTECHER. I am not in favor of committing the resolutions, I believe that we ought to vote upon the resolutions immediately. I believe that we have seen the curse of landgrabbing in this State. We have seen the settler go, with his family, upon land, and work there for years, and then have a man stand back with his locating certificate,

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and rob him of the fruits of his industry and toil. I have not heard it said upon this floor, that the University of California is in need of money; they do not claim that they are in need of money, and I do know that the people of California do not desire to have the management of its University turned into a broker shop. If the University cannot be perpetuated——

THE PRESIDENT. The gentleman must confine himself to the question.

MR. BEERSTECHER. The motion is to commit. If the University cannot be perpetuated without entailing misery, by oppression and by injustice; if it can only rise amid the tears and groans of outraged families, then, sir, it had better sink to the ground.

THE PRESIDENT. The gentleman is out of order.

MR. REED. Mr. President: I think it is eminently proper and just that this matter should be referred to a special committee, simply for the reason that the language in the memorial is not of the dignified character, in my judgment, that should be sent to our Senators and Representatives. I have hastily prepared a resolution eliminating some of the objectionable features, but I should prefer that it should be referred to a committee that can report almost immediately, and the Convention can take action this evening or to-morrow morning. It will require but a very short time, and I think it will be just, and proper, and wise.

MR. WYATT. Mr. President: I hope that no delay will occur in this matter. A bill is liable to pass in Congress—either the Nourse bill or the Booth bill, or both—and to pass immediately. There are no delays in steals, and if Nourse can force the bill through to-day he will do it, and he is there with his lobby for that purpose. I am entirely opposed to any delay. Every time a steal is proposed, some delay is hatched up until after the steal has been effected. Now, I want to make one effort before the steal takes place to-day, to say that I am opposed to it. If the Nourse bill does not represent the University, and if the University is opposed to it, let the Regents of the University who are opposed to it come up and say that they are opposed to it. Let us not try to gloss it over and put it in fine language, but say, in the language of an honest man, that it is a steal. That is just the language that will suit me. I do not want anything more than that. This man Hallidie, who took me to task the other day——

THE PRESIDENT. The gentleman must confine himself to the question.

MR. WYATT. Yes. The question is on delay, or on referring to a committee. I am utterly opposed to committing the resolutions for further delay in this matter. It is only calculated to delay it. I hope we will vote on it just as we are. The University has given us all the information they can.

MR. REYNOLDS. Mr. President: I hope these resolutions will not be committed, and that the vote will be taken immediately. The resolutions are aimed at the forty-five thousand acre steal. They are aimed at the Davis bill. I only mentioned the Booth bill in my remarks so as to inform the Convention that there was another bill pending before Congress, and that it was not that one at which the resolutions were aimed. Now, I do not see any necessity for discussing the Booth bill, or discussing what the University desires to do, or is aiming to do; but the only need is, that we express by these resolutions what we mean in regard to the forty-five thousand acre grab. But immediately gentlemen arise and parade before us the great economy with which the University has managed this land grant. Mr. President, these remarks are wholly aside from the question, and have nothing to do with it. As to committing the resolutions for the purpose of dressing them up in finer language, I am opposed to it. I am sure that the resolutions are aimed at the forty-five thousand acre land grab, and I am not particular as to the language used in opposition to it. There can be no mistake about it. According to the Booth bill, read by the gentleman from Alameda, these resolutions could not be construed to apply to that, because they expressly state that it is forty-five thousand acres that they are aimed at.

Messrs. Dudley of Solano, Hunter, McFarland, Brown, and Tully demanded the previous question, which was ordered by the Convention.

Upon the motion of Mr. Wilson, the ayes and noes were demanded by Messrs. Wyatt, Barton, Brown, Condon, and Huestis.

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

AYES.

Andrews,	Howard, of Los Angeles,	Schomp,
Belcher,	Howard, of Mariposa,	Shafter,
Biggs,	Jones,	Shurtleff,
Boggs,	Kelley,	Smith, of Santa Clara,
Boucher,	Laine,	Steele,
Caples,	Larue,	Stevenson,
Casserly,	Lewis,	Swing,
Chapman,	Mansfield,	Thompson,
Charles,	Martin, of Alameda,	Tinnin,
Cowden,	McCallum,	Townsend,
Cross,	McFarland,	Tully,
Crouch,	McNutt,	Van Dyke,
Dean,	Mills,	Van Voorhies,
Edgerton,	Morse,	Waters,
Glascock,	Noel,	Wellet,
Hager,	Ohleyer,	Wickes,
Hall,	Porter,	Wilson, of Tehama,
Hilborn,	Reed,	Winans,
Hitchcock,	Rhodes,	Mr. President—59.
Holmes,	Schell,	

NOES.

Ayers,	Beerstecher,	Campbell,
Barbour,	Bell,	Condon,
Barry,	Brown,	Davis,
Barton,	Burt,	Dowling,
Doyle,	Huestis,	Ringgold,
Dudley, of Solano,	Hughey,	Smith, of 4th District,
Estee,	Hunter,	Smith, of San Francisco,
Evey,	Inman,	Soule,
Farrell,	Joyce,	Stedman,
Filcher,	Kenny,	Sweasey,
Freud,	Larkin,	Swenson,
Garvey,	Lavigne,	Turner,
Gorman,	Lindow,	Tuttle,
Grace,	McComas,	Vacquerel,
Graves,	Moffat,	Walker, of Tuolumne,
Harrison,	Moreland,	Wellin,
Harvey,	Nason,	West,
Heiskell,	Nelson,	White,
Herold,	Neunaber,	Wilson, of 1st District,
Herrington,	Reynolds,	Wyatt—60.

MR. REED. Mr. President: I desire to send up a substitute. I would say that the substitute is the same in substance——

THE PRESIDENT. Under the previous question no amendment is in order.

MR. HAGER. With the consent of the mover of the resolutions, I would like to offer an amendment.

MR. REYNOLDS. The amendment of the gentleman is merely half a dozen words or so to designate the bill.

MR. BEERSTECHER. I object.

MR. GRACE. I object.

MR. HAGER. Cannot the mover accept an amendment?

THE PRESIDENT. No, sir; the previous question has been ordered.

MR. HAGER. I ask unanimous consent that this amendment be accepted.

MR. WEST. I object.

MR. HAGER. The amendment is simply to insert, "not Senate bill one thousand seven hundred and fourteen, introduced by Mr. Booth." Without that it might do a great deal of mischief. We are all against the Nourse bill. We will all vote for it with that in.

MR. BEERSTECHER. I object.

THE PRESIDENT. The gentleman will send up his proposition.

THE SECRETARY read:

"Amend in line one, by inserting after the word 'bill,' 'not Senate bill one thousand seven hundred and fourteen, introduced by Mr. Booth.'"

MR. GRACE. I object to this.

MR. WYATT. I object, too.

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

The ayes and noes were demanded by Messrs. Beerstecher, Wyatt, Lindow, White and Barton.

The roll was called, and the memorial adopted by the following vote:

AYES.

Andrews,	Graves,	Pulliam,
Ayers,	Hale,	Reynolds,
Barbour,	Hall,	Rhodes,
Barry,	Harrison,	Ringgold,
Barton,	Harvey,	Shafter,
Beerstecher,	Heiskell,	Shurtleff,
Bell,	Herold,	Smith, of Santa Clara,
Biggs,	Herrington,	Smith, of 4th District,
Boggs,	Hitchcock,	Smith, of San Francisco,
Boucher,	Holmes,	Soule,
Brown,	Howard, of Mariposa,	Stedman,
Burt,	Huestis,	Steele,
Campbell,	Hughey,	Sweasey,
Caples,	Hunter,	Swenson,
Casserly,	Inman,	Swing,
Chapman,	Jones,	Thompson,
Charles,	Joyce,	Tinnin,
Condon,	Kenny,	Townsend,
Cowden,	Larkin,	Tully,
Cross,	Lavigne,	Turner,
Davis,	Lindow,	Tuttle,
Dean,	Martin, of Alameda,	Vacquerel,
Dowling,	McCallum,	Van Dyke,
Doyle,	McComas,	Walker, of Tuolumne,
Dudley, of Solano,	McCoy,	Waters,
Dunlap,	McNutt,	Weller,
Estee,	Mills,	Wellin,
Evey,	Moffat,	West,
Farrell,	Moreland,	Wickes,
Filcher,	Morse,	White,
Freud,	Nason,	Wilson, of Tehama,
Garvey,	Nelson,	Winans,
Gorman,	Neunaber,	Wyatt,
Grace,	Noel,	Mr. President—102.

NOES.

Belcher,	Laine,	Ohleyer,
Crouch,	Larue,	Porter,
Edgerton,	Lewis,	Schomp,
Hager,	Mansfield,	Van Voorhies,
Kelley,	McFarland,	Wilson, of 1st Dist—15.

NOTICE.

MR. TINNIN. I desire to give notice of a motion to reconsider.

THE SECRETARY read:

"I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the memorial to Congress, introduced this day by Mr. Reynolds, was passed."

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MR. TINNIN. Mr. President: I am in favor of the substance of the resolutions, but I am opposed to the manner in which it is worded. It is indefinite. I desire to have a more definite expression.

RECONSIDERATION—JUDICIARY.

MR. MCCALLUM. Mr. President: In accordance with notice, I move to reconsider the vote by which the Convention refused to order engrossed, for a second reading, the article on judiciary.

The motion prevailed.

MR. VAN DYKE. Mr. Presideut: In pursuance of notice, I move to reconsider the vote by which the Convention refused to concur in the amendments of the Committee of the Whole to section seventeen.

The motion prevailed.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: I think we got into a wilderness of difficulty yesterday, and I think we will get into another one here to-day, and I think that the best plan we can adopt is to take the sense of this Convention on certain propositions, and recommit this article to the Judiciary Committee to amend it in conformity with the wishes of this Convention on those propositions. We are spending days and days here in wrangling over questions without taking the sense of the Convention upon propositions. Now, yesterday we did take the sense of the Convention upon one proposition distinctly and fairly. If we can do that to-day on two or three other propositions, and have the Committee on Judiciary formulate the article to harmonize with the sense of this Convention, we will be advancing in our labors. I have a resolution here which I wish to offer, to take the sense of the Convention on certain propositions. These propositions I wish to call a vote on separately. They are then subject to amendment, but when we take a vote on a proposition it will be a direction to the Committee on Judiciary, and we can consider that as settled. By this means I think we can get through with this matter in a short time. I understand that the sense of the Convention is in favor of the scheme before us. The great difficulty is the great expense it seems to entail upon the State. I send up this resolution, Mr. President.

THE SECRETARY read:

"*Resolved*, That the article on judiciary department be recommitted to the Committee on Judiciary and Judicial Department, with instructions to amend and reconstruct the same so as to harmonize it with the following amendments and propositions, to wit: First—Judges of the Superior Courts; salaries payable, one half out of the State treasury and one half by their respective counties. Second—Ten Judges to the City and County of San Francisco; two each to Alameda, Sacramento, Los Angeles, and Santa Clara; and one to the counties of Yuba and Sutter jointly; and one to each of the other counties in the State. Third—Salaries of Superior Court Judges as follows: San Francisco and Alameda, five thousand dollars; Sacramento, Santa Clara, Los Angeles, San Joaquin, Sonoma, Nevada, Solano, Butte, Placer, and Yuba and Sutter jointly, four thousand dollars; El Dorado, Humboldt, Amador, Santa Cruz, Monterey, Contra Costa, Napa, Mendocino, Colusa, Yolo, Calaveras, San Bernardino, San Diego, Santa Barbara, San Luis Obispo, San Mateo, Shasta, Siskiyou, Tulare, Tuolumne, Tehama, Sierra, Marin, Ventura, Plumas, Lake, and Kern, three thousand dollars; all other counties in the State, two thousand five hundred dollars."

MR. LAINE. Mr. President: I hope that this resolution will not pass. It does not seem to me that it helps us at all out of the difficulties in which we are placed——

MR. VAN DYKE. I had not yielded the floor. Now, as I said, the difficulty seems to be that the Convention cannot agree on any scheme that is before the body. The system before the Convention amounts to over three hundred thousand dollars as it is now. The old system, including all the Judges, was about two hundred and fifty thousand dollars. This, as proposed, will amount to two hundred and sixty-one thousand dollars; and that leaves the Supreme Court as it is now before the Convention. It does not disturb that at all. I was in favor of reducing it to five, but in consultation with a number of gentlemen, they urged that it would disturb the whole scheme and therefore that was omitted. Now, sir, in reference to the scale of salaries. Of course the vote will be taken upon each of the propositions, and as each proposition is reached I think we will be able to show to the Convention the justice of that classification on the basis of population and the assessment roll combined. Now, sir, take the County of Alameda, as a unit, on the assessment roll and population, and it gives San Francisco a fraction less than ten Superior Judges. In the scheme now before the Convention it has twelve Superior Judges. The present scheme displaces nine Judges in San Francisco. I think ten will meet the demand for the present. We have got to reduce somewhere. Now, in reference to the salaries. Take the County of Alameda; it has an assessment roll of over forty million dollars. There is no other county, except San Francisco, that comes up to a little over eighteen million dollars, excepting Santa Clara, which, I think, is twenty-seven million dollars. This is a reduction of the present rate to the District Judges from six thousand dollars to five thousand dollars. Now, in the other large counties the scale is four thousand dollars, which is a reduction from five thousand to four thousand dollars. It is a reduction of one thousand dollars on the scale of prices, and the Supreme Court salaries are the same as at present.

Now, the question is simply whether we are satisfied with the article as reported by the Committee of the Whole. If we want to change, how are we going to change it? Whether we are going to do it here in utter confusion, or whether we are going to get the sense of the Convention on certain propositions, and then have the article adjusted to those propositions? I think we can do it better by submitting certain propositions to this Convention. The gentleman from Santa Clara said he was opposed to it. What part of it? Let us vote upon one. If you are opposed to that, vote it down. We have fought this in the Convention three or four days, and we are as far as ever from an adjustment of the matter. It must be evident to every member here that some plan has got to be adopted to get us out of this dilemma. Now, what plan? What better than to take the sense of this Convention upon certain propositions? Take it first upon paying the salaries half out of the county and half out of the State treasury. That we have already adopted. Take it next on how many Judges you will allow San Francisco and these other counties. You get a direct vote whether you will have ten or twelve. So with the other counties. Then you come to the question of salaries. You can say what you will allow them, according to the population and assessment roll. It seems to me, that by that means we can get through with this question, and let the Committee on Judiciary formulate the article according to the sense of the Convention.

MR. MCFARLAND. Mr. President: I desire to offer a substitute for the resolution.

THE SECRETARY read:

"*Resolved*, That the article on the judicial department be recommitted to the Committee on Judiciary and Judicial Department, with instructions to report to the Convention instead thereof the provisions of the present Constitution, as contained in article six thereof."

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I think this Convention is satisfied, after a full discussion of this whole scheme, that it will not work in this State. I do not believe, sir, that at the present time there are a dozen counties in the State of California in which that scheme would work—outside of San Francisco and Sacramento, and Alameda, perhaps, and one or two other counties. There may be six or eight counties where the provisions providing for one Court in the county would do. There may be about that many counties where the population is just about large enough to give business to one Court. In the County of Sacramento you would have business enough to support two Judges; perhaps, so would Alameda. The balance of the counties are too small to pay a good salary to more than one Judge. If you fix a county where it was just about right to have one Court, when the business of the county increased so that the one Court could not do it all, what would be the result? You would either have to compel that Court to do more business than could be done properly, or else you would have to create another Court, and you would have two Courts, neither of which would have enough business to do. I say that in this State, with the population we have, this system will not work. It is a system that does not prevail anywhere else that I know of in the United States. Some one said it was the system they had in Nevada, but it is not. In Nevada they have abolished their County Courts, and they have their District Courts, districts being composed sometimes of one county and sometimes of more. Your system here proposes to abolish the District Courts and have nothing but County Courts. You provide that there must be a Court in every county in the State. Under our present system the ordinary legal business, the small criminal business, and the probate business, is done in the County Court. If it is a small county a lawyer can be found who will take the office for a small amount. He can practice law and make money in other ways. Under this system you provide that he cannot practice law. In most of the small counties there is not more than one or two men fit to occupy the position of Superior Judge, because a momentous case may be taken before any Court in the State. We want such men as will not take your office for two thousand dollars a year. They can make more money without it. What are you going to do, if you give him two thousand dollars? You have got to have a man who is not to be a Judge, or else you must give a larger salary than you propose. Under the old system if the business falls off you can add more, or you can take off a county or two, and create a new district. There is a flexibility about it by which with ordinary expense you can have the business of your people done. Under this system you cannot do it. It will not work, except in San Francisco, and perhaps in Sacramento and Alameda, and perhaps Los Angeles. I think in Sacramento there is too much business for one and not enough for two.

MR. HOWARD, of Los Angeles. The District and County Judge are both kept employed all the time in our county.

MR. MCFARLAND. Then we will say you have enough business for two; but in a number of the counties there is not enough business for one, and in a great many of the counties there is too much for one and not enough for two. You cannot fix it anyway. You cannot divide it at all. There is no district about it. You must allow one Judge to do more than he can do properly, or two to do very little.

Now take your Supreme Court. I do not see how it is better than the old system. I think it is worse. I say that the present system is a flexible system, that can be applied to all circumstances. If your districts are too large, you make them smaller. I have no objection to extending the jurisdiction of the County Court. My proposition is to take the present judicial system of the State, and if you could amend it a little, all the better.

MR. EDGERTON. You propose to have the committee report the whole system. We are not at liberty to make any amendments.

MR. WILSON, of 1st District. Are you really in earnest in your proposition? [Laughter.]

MR. MCFARLAND. Yes, I am in earnest; and I tell you you will find that if that mongrel system is adopted, the time will come when you will think I am in earnest, and when you will be glad to go back to the old system. I make that prophecy. Of course if the committee report the old system here, and anybody sees any amendment that can be made to improve it, it can be done. It is the only way that I see to get at the matter at all. Now there is a proposition here to recommit this to the Committee on Judiciary with certain instructions. I say that the present system is infinitely better than this one.

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MR. BARBOUR. Suppose we have the district system?

MR. McFARLAND. I do not propose to sit down here and write out instructions. I say, let the committee report back here the present system, and then we will have it before us, and can amend it if necessary.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I am opposed to both these propositions. It does seem to me that the real difficulties in the way exist in sections two, three and seventeen. Now, under the old system, we had an annual outlay of two hundred and thirty-nine thousand nine hundred dollars, as I figure it, and under the new system it will be three hundred and three thousand dollars, making an increase of sixty-three thousand dollars over the old system. Now, I am satisfied in my own mind, that the people of the State will not be satisfied with that. A great many gentlemen say that the people will be satisfied. I do not believe it. They are compelled now to retrench in every particular they can in their private expenses as well as their public expenses. Now, while I am a lawyer, while I have the natural pride belonging to my class, and the natural bias, I am still a taxpayer of this State. There are a very large number of people who are not litigants, who are taxpayers, who will not approve of this policy of increasing expenses. I am utterly opposed to this monstrosity of a Supreme Court, as reported here. I have been opposed to it from the beginning, in committee and out of committee, and the more I consider it the more obnoxious it seems to me. The committee had almost completed their work when this matter was sprung upon them. It was not the work of that committee or any member of it. It was brought in there when the work was largely done, and we were compelled to act upon it without sufficient consideration. Many of us were opposed to it there, and the more I study it, the more I become convinced that we were right.

MR. WILSON. Are you aware of the fact that we have not now a Supreme Court under consideration, but merely the Superior Courts?

MR. LAINE. I am aware that there is a motion to send this back to the committee to strike out this system. Now, in the first place, that Supreme Court is complex, cumbersome, and costly, and I believe it is a Court of fragments lightly bound together by the Chief Justice. It sits in two departments, and it sits in bank. How can it be always open by any possibility? Then, in addition to that, it is required to have three calendars. There is the calendar of number one, the calendar of number two, and the calendar of bank, and a large number of cases in judicial limbo laid by to wait a time when the Chief Justice and two of his Associates require it to be heard. It gives the power to one man. Then it leads to delay. It amounts to a mill with two hoppers. You must grind it in hopper number one, and then go in bank to grind it over again after waiting thirty days. Then it turns it into a political machine. Suppose the Chief Justice is a Democrat; what chance will a Republican have in that Court? It is no use to talk to me about the uprightness of Judges. We have the Judges of the Supreme Court of the United States Act; we have seen the famous "seven to eight." I believe with Thomas Jefferson: trust no man. Now, for these reasons, I say the system is not a good one. It is a monstrosity; and I believe that any person who will diligently study this matter will see that it is impossible to make it work. I propose to go back to the second section of the old Constitution, and then in place of the third section, fix the salary of the Supreme Court Judges at five thousand dollars.

MR. HILBORN. Does the gentleman not know that the Supreme Court at the present time is utterly insufficient?

MR. LAINE. The gentleman knows why; he knows that one of the Judges is incompetent to do anything. I believe that five active, intelligent Judges can keep up with the calendar. There has been an article published in the Law Review, and it criticises this system, and I think correctly. I think any lawyer who peruses it will think so too.

THE PRESIDENT. The gentleman's ten minutes have expired.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: I am very much surprised, at this late hour in this discussion, to have heard the argument of my friend from Santa Clara, for whom I entertain so much respect and good feeling. He has been perfectly silent in the Convention up to this late period of time, if I recollect right, upon the subject of the judiciary; and now, merely upon a motion to recommit the article, he has made an argument against the entire system from first to last. I am not at all impressed with the force of his argument. In the first place, he moralizes upon the fact that this new system is an increase of sixty-three thousand dollars over the old system. Now, let us see what logic there is in that. The old system is admitted by every person to be utterly inadequate to the wants of the State. Every person knows that it is utterly inadequate, both in the Supreme Court and in the District Courts, and if there is any one thing upon which the intelligent people of this State have desired some change, it is in a judicial system. Now we have devised here a plan which I think, in the judgment of a great majority of this Convention, is a superior plan to the old system for the present wants of the State, and is an adequate and efficient plan for the wants of the State. What if it does cost sixty-three thousand dollars more? If it is a better system, if it provides an efficient judiciary, if it makes decisions more speedy and supplies wants which now exist, it must cost more. If there is any logic in his argument, you must throw away a good system because it costs more than a bad system.

Now, so far as the Supreme Court is concerned, I must put my judgment against the gentleman. Every member knows that the Supreme Court is inadequate to perform the duties of that Court. There are no five men in the State of California who can keep up the calendar of the Supreme Court and write decisions. That has been demonstrated, and no gentleman who understands the business will deny what I say. I assert it as a fact, that there are no five men in the State of California who can write the decisions of the Supreme Court and keep up with the calendar of the Supreme Court of this State. Therefore, you derive from this fact this result: you must increase the judicial power of the Supreme Court. To increase it in numbers does not increase it in power. How then will you increase the power of the Supreme Court and render it adequate to the business which pertains to it? By no other plan but by increasing the Judges and allowing them to sit in departments. I see no difficulty at all in allowing them to sit in departments for the purpose of trying two cases at once, and no difficulty in allowing them to resolve themselves into bank upon important and exceptional cases. The system of sitting in bank and sitting in separate departments has existed in many States of the Union. There is nothing impracticable in it. There is no difficulty in arranging the calendars. It is simply a matter of routine. Suppose it does increase the expenses of the State. It will result in prompt decisions; men will know their rights and will not be delayed. Each county in the State will have a Judge belonging to itself, and the people will be satisfied when they see that. They will say, this judicial system has cost sixty-three thousand dollars more than the old, but we have got a great advantage from it. We have now a Judge in our county, and do not have to run off into other counties. He is always there. He is always at home. We have our Judge confined to the business of our own county. The people will be satisfied, and it is a popular system so far as my information goes. All the counties of the State, with very few exceptions, like this system of having their own special Judge, and they ought to have it. So that I have no doubt myself that the people will be satisfied when they see the working of the system, and find how much better it is than the old, and how much more speedily cases will be decided. Now there is nothing in the objection that the Chief Justice may use his position for political purposes. We have amended the section already, and provided that a majority of the Court may order a case tried in bank, so that any objection upon that score is removed by the amendment which was adopted yesterday.

Now, as to the system proposed by the gentleman from Alameda, Mr. Van Dyke. Why, he is wonderfully self-sacrificing. He proposes to reduce the judicial expenses of the State, and commends it very highly, but you will find that the County of Alameda has two Judges at five thousand dollars.

MR. VAN DYKE. Well, if the gentlemen find out that it is not right, cut it down.

MR. WILSON. I was astonished at the self-sacrificing spirit of the County of Alameda. It is certainly very commendable. Now, charity should not only begin at home, but I think economy should begin at home. If the gentleman had come forward and said that upon consideration he was satisfied that Alameda would only require one Judge, and that they were willing to take three thousand five hundred dollars, then he would have carried out the economical idea which he applies to other counties. But he presents his scheme of economy with the prominent feature in the foreground that Alameda shall have two Judges, each with a salary of five thousand dollars. Now, when you come to consider this whole thing my own opinion is that the report of the committee, as originally reported, is better than anything that has been presented. If there is any injustice done to any county by being placed in a class different from that to which it belongs, it is a thing that can be very easily rectified on the next reading of the bill; but the section originally reported, it seems to me, comes nearer doing right than any other proposition before the Convention.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: It seems to me that the motion of Judge McFarland is an insult to the intelligence of this Convention.

MR. McFARLAND. Then it won't insult the gentleman from Kern, I know. [Laughter.]

MR. SMITH. This plan was thoroughly considered by the Committee. It was thoroughly considered by the members of the Bar of San Francisco. When the report was submitted to this Convention, the very best of men said that it was one of the best reports submitted here. The Committee of the Whole took it under consideration, and, with very few amendments, adopted it. Now, after the Convention has passed through nearly all of its labor, after it has passed beyond the time that it was allowed to sit and draw pay, Judge McFarland comes forward and proposes to set this ship at sea again. The gentleman from Santa Clara concurs with him on the general proposition, but very materially disagrees with him upon the plan that shall be adopted when we come into the consideration of the matter again; which only shows that if the matter comes up again we are farther at sea than we were when we first began this question. Now what is all this difficulty about? Simply upon a question of salaries which are not permanent, but only for the first term. When you look into this matter, it is so small and inconsiderable that it seems to me to be surprising that this Convention should have taken up the time that it has in considering a question of salaries. Now there has been a good deal of pulling and hauling from different portions of the State from local feelings. So far as I am concerned, although I have been charged with being selfish in this matter, I wish to say that so far as my section is concerned, I leave it entirely with this body as to what they shall say in regard to that matter. Now we have passed upon nearly all of this matter. It has been thoroughly considered, and now the proposition is to go back and adopt the old system. Why, the first thing that was suggested in calling this Convention was the reorganization of the judiciary of this State, and it seems to me strange that some gentlemen are now taking the back track in regard to the matter. I like to give men credit for good motives, but it seems strange that men who have stood by the system now seem to want to take the back track. I do not understand it.

THE PRESIDENT. The question is on the adoption of the substitute offered by the gentleman from Sacramento, Mr. McFarland.

The substitute was rejected.

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MR. KELLEY. Mr. President: I offer a substitute.

THE SECRETARY read:

"*Resolved*, That the report of the judiciary be referred back to the committee, with instructions to classify the Superior Court Judges in two or more classes, with salaries not to exceed four thousand dollars for the first class, to be paid out of the State treasury."

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: If that resolution passes, that will be all the instructions that the committee will have from this Convention. There is much more that should be embodied in the instructions in relation to this report. There should be changes in relation to the judicial system, in relation to the expenses of that Court, so that it will accord with the acts of this Convention in other respects. I hope it will be referred with such special instructions as will correct and remedy the evils that exist in the minds of a majority of this Convention. When the Chairman of the committee says that of all the questions to be considered by the Constitutional Convention this was the most important, I beg leave to differ with him. It was a question of some counties, but to my mind, from the best information I have, a large majority of Judges and lawyers in this State opposed the calling of a Constitutional Convention. I believe this system, as stated by the gentleman from Santa Clara, originated outside of this Convention; outside of the brains of the Committee on Judiciary. I believe it was intended, if passed in the present form, to load the Constitution so that it would endanger its success before the people. For that reason I voted against its engrossment, and if it is not amended I will vote against it again. If the old Constitution can be amended as suggested by the gentleman from Sacramento this morning, and so as to provide those provisions which we sought yesterday, it can become a part of the Constitution of this State and will be adopted by the people.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I trust that this proposition will not be adopted, and in saying this I do not wish to be understood as expressing any opinion upon the merits of the proposition *per se*. The scheme of the resolution offered by the gentleman from Alameda, Mr. Van Dyke, is to take the sense of this body upon distinct and separate propositions. Now, what should be the salary of the Judges of the several Superior Courts in this State, is presented as a distinct proposition, and when we come to that it will be open to amendment, and the Convention can pass upon it and adopt it in the form in which it is presented, or amend it according to its pleasure. There is another proposition as to whether the salaries shall be paid wholly from the State treasury or whether they shall be paid half from the State treasury and the other half from the county treasury? Still another, that there should be a fixed sum, say two thousand dollars, paid from the State treasury for the salary of each and every Superior Judge in the State, and that the balance shall be paid from the county treasuries. I would prefer the last proposition. I hope, Mr. President, that we will take the sense of the Convention upon these questions, and I believe in that way we shall be able to determine the matter. I propose to offer an amendment to provide for the payment of two thousand dollars by the State towards the salary of each Judge and the balance from the respective county treasuries.

MR. WICKES. Mr. President: I voted against the engrossment of the article because I thought the system proposed was too costly. I trust now, that the article will be rereferred to the Committee on Judiciary with instructions to give it a more economic basis. The Chairman of the Committee says that a good system must necessarily be more costly. Now, I think one of the elements of a good system is, that it be economic as well as effectual. I trust that the Superior Courts will be divided into three classes. Four thousand dollars for the first class I think would be enough salary, three thousand dollars for the second class, and two thousand dollars for the third class; that would be more economical than the scheme proposed in section seventeen, and would better meet the wishes of the people.

MR. HAGER. Mr. President: This report being before the house now on the motion to reconsider, I do not know that there is any objection to any amendments being offered. I would like to inquire of the Chair if any person could not offer an amendment?

THE PRESIDENT. Undoubtedly he could—any amendment to section seventeen he chooses.

MR. HAGER. That is what I understand. I would ask, therefore, why it is necessary to recommit this to the committee when we might offer these amendments here at this time. If it should be recommitted to the committee I hope it will be without instructions.

THE PRESIDENT. The question is on the adoption of the substitute offered by the gentleman from Yolo.

The substitute was rejected.

MR. VAN DYKE. I ask for a division of the resolution so that the sense of the Convention can be taken upon the first proposition first, and so on *seriatim*.

MR. HOLMES. Mr. President: I send up a substitute.

THE SECRETARY read:

"*Resolved*, That the report of the Committee on Judiciary and Judicial Department be referred back to the committee without instructions, only to harmonize said report with the views of this body."

[Laughter.]

MR. WATERS. Mr. President: I move to lay the resolution on the table. Let us quit this foolishness, and go on and get through with this business.

MR. VAN DYKE. Ayes and noes.

Messrs. Hale, Filcher, Huestis, and Nason also demanded the ayes and noes.

MR. WATERS. Mr. President: There seems to be a misapprehension. My motion is to lay these buncombe resolutions on the table, and not the article.

THE PRESIDENT. I understand the motion. The question is on the motion to lay the resolution of the gentleman from Alameda upon the table.

MR. WILSON. I understand that to lay the resolution on the table does not carry the section.

THE PRESIDENT. It carries nothing but the resolution itself.

MR. VAN DYKE. In other words, it leaves us just as far off as ever.

THE PRESIDENT. The Secretary will call the roll.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Herrington,	Porter,
Barton,	Hilborn,	Reed,
Beerstecher,	Hitchcock,	Schell,
Belcher,	Holmes,	Schomp,
Biggs,	Howard, of Los Angeles,	Shafter,
Boggs,	Howard, of Mariposa,	Shurtleff,
Boucher,	Huestis,	Smith, of 4th District,
Brown,	Jones,	Soule,
Caples,	Kelley,	Steele,
Casserly,	Keyes,	Stevenson,
Cowden,	Laine,	Sweasey,
Cross,	Larue,	Swing,
Crouch,	Lewis,	Thompson,
Davis,	Mansfield,	Tinnin,
Dean,	Martin, of Alameda,	Townsend,
Doyle,	McComas,	Tully,
Dunlap,	McCoy,	Turner,
Edgerton,	McFarland,	Van Voorhies,
Estee,	McNutt,	Walker, of Tuolumne,
Freeman,	Mills,	Waters,
Garvey,	Moreland,	White,
Glascock,	Murphy,	Wilson, of Tehama,
Graves,	Neunaber,	Wilson, of 1st District,
Hager,	Ohleyer,	Winans,
Hall,	O'Sullivan,	Mr. President—76.
Heiskell,		

NOES.

Ayers,	Hale,	Pulliam,
Barbour,	Harrison,	Reynolds,
Barry,	Harvey,	Rhodes,
Bell,	Herold,	Ringgold,
Burt,	Hunter,	Rolfe,
Campbell,	Inman,	Smith, of San Francisco,
Chapman,	Joyce,	Stedman,
Charles,	Kenny,	Swenson,
Condon,	Larkin,	Tuttle,
Dowling,	Lavigne,	Vacquerel,
Dudley, of Solano,	Lindow,	Van Dyke,
Evey,	McCallum,	Weller,
Farrell,	Moffat,	Wellin,
Filcher,	Morse,	West,
Gorman,	Nason,	Wickes,
Grace,	Nelson,	Wyatt—48.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M. President Hoge in the chair.

Roll called and quorum present.

NOTICE OF RECONSIDERATION.

MR. TINNIN. I hereby give notice that I withdraw the notice given by me this day, to reconsider on to-morrow, the vote by which the memorial to Congress, introduced by Mr. Reynolds, was passed.

IN RELATION TO THE JUDICIARY ARTICLE.

MR. LAINE. Mr. President: I offer a resolution.

THE SECRETARY read:

"*Resolved*, That the article on judiciary be referred to the Judiciary Committee, with the following instructions: First—Substitute for section two the following, viz.: Section two. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, excepting such business as may be done at Chambers; and the presence of three Justices shall be necessary to pronounce a judgment. Second—Amend section three by striking out all after the words, 'Section three. The,' in the first line, down to the words, 'an entry,' in the eighth line, and insert the following, viz.: 'Justices of the Supreme Court shall be elected by the qualified electors of the State at large, at the general State elections at the times and places that State officers are elected, and the term of office shall be ten years from and after the first Monday in January next succeeding their election; provided, that the Justices elected at the first election under this Constitution shall, at their first meeting, so classify themselves, by lot, that one of them shall go out of office at the end of two years, one at the end of four years, one at the end of six years, one at the end of eight years, and one at the end of ten years.' Third—Amend section seventeen to read as follows, viz.: Section Seventeen. The Justices of the Supreme Court shall severally receive from the State treasury an annual salary of five thousand dollars, payable monthly. Each Judge of a Superior Court of this State of counties and cities and counties, of the first class, shall receive an annual salary of four thousand dollars; those of the second class, an

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annual salary of three thousand dollars; and those of the third class, an annual salary of two thousand dollars; all said salaries to be paid out of the State treasury monthly. The following counties and cities and counties shall be counties of the first class (naming them). The following counties shall be counties of the second class (naming them). The remainder of the counties of the State shall be counties of the third class. The Legislature may, from time to time, as population and the public interests require it, change the above classification, and may, by a two-thirds vote of all the members elected to both branches of the Legislature, abolish the third class."

MR. WILSON, of First District. Mr. President: I raise the point of order, that the Convention had refused to refer with instructions; and further, that only section seventeen is before the Convention. The question is, whether this Convention will concur with the recommendation of the Committee of the Whole to section seventeen. The gentleman is now moving to recommit the whole article with certain instructions.

THE PRESIDENT. The Convention before recess, by a direct vote, refused to recommit this article. Therefore upon that ground the Chair decides that this motion is not in order.

MR. LAINE. This is with different instructions.

THE PRESIDENT. No matter; no business has transpired since.

AN APPEAL.

MR. LAINE. I most respectfully appeal from the decision of the Chair.

The appeal was seconded by Messrs. Wyatt, Stedman, Larkin, and White.

THE PRESIDENT. The Convention has under consideration the report of the Committee on Judiciary. They have adopted a large portion, almost the whole of it, having passed upon every section in it. They have reconsidered the vote on section seventeen, and that section is now pending. Before recess motions were made to recommit this article, and certain sections, with instructions, and they were voted down. Without any business transpiring since, the gentleman from Santa Clara again moves to recommit this same section to the committee, with instructions, identical almost with the instructions moved by the gentleman from Sacramento, and which the Convention voted down. The Chair decides the motion out of order, and from that decision the gentleman appeals. The question is: Shall the decision of the Chair stand as the judgment of the Convention.

MR. MCCALLUM. There has been no vote to reconsider anything except that by which the article was ordered engrossed.

THE PRESIDENT. There has been a motion to reconsider the vote by which the Convention refused to concur in the recommendation of the Committee of the Whole to section seventeen.

MR. MCCALLUM. That vote has not been taken yet.

THE PRESIDENT. Long ago, sir. Shall the decision of the Chair stand as the judgment of the Convention?

The ayes and noes were demanded by Messrs. White, Larkin, Condon, Filcher, and Wyatt.

The roll was called, and the decision of the Chair was sustained by the following vote:

AYES.

Ayers,	Graves,	Noel,
Barry,	Hall,	O'Donnell,
Barton,	Heiskell,	O'Sullivan,
Beerstecher,	Herold,	Porter,
Biggs,	Hilborn,	Pulliam,
Boggs,	Hitchcock,	Reed,
Boucher,	Holmes,	Schell,
Brown,	Howard, of Los Angeles,	Smith, of 4th District,
Campbell,	Howard, of Mariposa,	Soule,
Caples,	Huestis,	Swing,
Chapman,	Hughey,	Thompson,
Charles,	Inman,	Townsend,
Cowden,	Jones,	Tully,
Cross,	Kenny,	Vacquerel,
Davis,	Lavigne,	Van Voorhies,
Dunlap,	Lindow,	Walker, of Tuolumne,
Eagon,	McFarland,	Waters,
Edgerton,	McNutt,	Wellin,
Estee,	Mills,	Wickes,
Freud,	Murphy,	Wilson, of First District,
Garvey,	Neunaber,	Winans—63.
Gorman,		

NOES.

Andrews,	Herrington,	Schomp,
Barbour,	Hunter,	Shafter,
Bell,	Joyce,	Shurtleff,
Burt,	Kelly,	Smith, of Santa Clara,
Casserly,	Keyes,	Smith, of San Francisco,
Condon,	Laine,	Stedman,
Crouch,	Larkin,	Steele,
Dean,	Mansfield,	Stevenson,
Dowling,	McCallum,	Sweasey,
Dudley, of Solano,	McComas,	Tinnin,
Evey,	McConnell,	Turner,
Farrell,	Moffat,	Tuttle,
Filcher,	Moreland,	Van Dyke,
Glascock,	Morse,	Weller,
Grace,	Nason,	West,
Hager,	Ohleyer,	White,
Harrison,	Rhodes,	Wilson, of Tehama,
Harvey,	Ringgold,	Wyatt—54.

MR. ROLFE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'each,' in line seven, and insert the following: 'Each of the Superior Court Judges shall receive an annual salary, to be fixed by the Legislature, payable at stated times, which shall not be increased or diminished during the term for which he shall have been elected, one half of which shall be paid from the State treasury, and the other half of such salaries from the treasuries of the respective counties for which such Judges are elected. Until otherwise changed by the Legislature, the annual salary of each of the Superior Court Judges of the City and County of San Francisco, and the Counties of Alameda, Sacramento, San Joaquin, Los Angeles, Santa Clara, Sonoma, and Nevada, and the Counties of Sutter and Yuba jointly, shall be forty-five hundred dollars; of the Counties of Amador, Butte, Colusa, Contra Costa, Calaveras, El Dorado, Fresno, Humboldt, Kern, Marin, Merced, Mendocino, Monterey, Napa, Placer, Plumas, San Bernardino, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Stanislaus, Tehama, Tulare, Tuolumne, and Yolo, thirty-five hundred dollars; and of all the other counties, twenty-five hundred dollars.'"

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. President: There are two or three things which I think have been sufficiently foreshadowed here, so that any person can become satisfied that there is a clear majority in favor of those certain propositions. Yesterday there was an amendment passed which divided the salaries between the State and the counties. It seems to me that is a fair expression of the sentiment of the Convention. I think that was passed by a respectable majority. Now, there are some who think that salaries were made too low, and that they ought to be five thousand dollars in some counties. There are others who think them too high. Now, it is evident we must make some concessions. I am willing to do so, for my own part. I am willing to concede something. I think the salaries as I have fixed them are about an average of the judgment of the Convention. I have endeavored to strike an average. I will admit that it increases the expenses of the judiciary system somewhat, something less than thirty thousand dollars. The whole thing will be about two hundred and ninety-three thousand dollars. If gentlemen will scan closely the present salaries of the different County Judges, and District Judges, and Supreme Justices, they will find that they all amount to two hundred and sixty-six thousand dollars. Now, it is said that the present system is inadequate. Of course if we are to have greater efficiency we must expect it to cost more. We have increased the expense a trifle, but gentlemen must remember that the expenses of the old system are constantly increasing. There is scarcely a session of the Legislature but what creates two or three new Courts, with all the attendant expenses, with salaries of five thousand to six thousand dollars a year. Now, I take it for granted that this new system will cut off this increase, and will be fully adequate for some time to come. Now, I place the salaries in such a way that there will be no applications to the Legislature to have them raised. The counties will be interested in the matter, and they will not be apt to consent to it. While the people of a county would scarcely take any pains to work against an increase of the Judge's salary where it is paid by the State, they would certainly object when it comes partly out of their own pockets.

I call attention to another thing. The section as amended by the Committee of the Whole fixes salaries at four thousand five hundred dollars and three thousand five hundred dollars, leaving none less than three thousand five hundred dollars. Now I take it for granted that these figures are satisfactory to a majority of this Convention, except as to the smaller counties. Therefore I have placed some ten or twelve of the smaller counties at two thousand five hundred dollars a year; then after it is passed, if there are any other counties which ought to be placed in a different class, it can be made known and the section modified accordingly. It can be modified, if it suits the Convention, according to the wishes of the delegations. I do not really think that a four thousand dollar salary is too much for the middle class counties, but it would probably be entailing too great an expense. Here we have four thousand five hundred dollar salaries for all the counties mentioned by the Committee of the Whole, with Nevada added. I thought that nothing but fair, and the Convention has so decided. There is no doubt in my mind that in the course of six years the present system will be expanded until the expense will be as great or greater than it will be under this system, and then it will probably not be as efficient. I believe it is conceded generally that this system will be much more efficient, and while the present cost for salaries may be a little greater, it will save thousands of dollars every year to individuals by making litigation cheaper. These are the facts which led me to introduce this amendment. I think we should all be willing to concede something; give way a little, in order to hit upon something that will be the average judgment of the Convention. I have not interfered with the salaries of the Supreme Court at all. That has been fairly decided, and the conclusion reached that they shall have a salary of six thousand dollars a year.

SPEECH OF MR. JONES.

MR. JONES. Mr. President: I am not able, myself, to approve of any scheme that I have heard, or that I may hear, which embraces the proposition to make the judiciary system of this State to depend for salaries on two, three, or four sources. I have had nothing to say during this long discussion. I do not now propose to speak with regard to any other point but this one, though I may hereafter. I have been at a loss to understand upon what ground, upon what considerations of policy, gentlemen think it so desirable that the State judiciary should not be paid by the State. The article proposes, in lieu of County, District, and Probate Judges, to appoint Superior Judges, one for each county in the

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State. That constitutes the subordinate judiciary system—the entire system—with the exception of the Supreme Court. The Judges of these several counties have general jurisdiction. Their process runs throughout the State, and suits from one county may be tried in another. All their proceedings are for and in the name of the people of the State. The criminal proceedings are all in the name of the people of the State of California. It is true that the County Courts try certain grades of offenses, and the District Courts certain other grades, but the distinction is purely artificial and made for convenience. Now we propose to substitute for these several Courts one Court, one State Court, and there is no ground for this artificial distinction. There is no room for it. Now if there are State Courts, and they take cognizance of all cases that come before a Court, upon what ground is it made local to the county? I hear but one reason, and that is if we make the county pay the salary there will be a feeling against excessive salaries. Now I fancy that will apply just as well the other way. If he is dependent upon the county for his salary, he will be incited to make himself popular in the locality, which will interfere with his usefulness and efficiency as a Judge of a State Court.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: The gentleman has seen fit to classify the county which I represent as a second-class county, and I repudiate all such classification. The delegation from Butte is united. We consider we have a first-class county.

MR. ROLFE. I placed it there just the same as the Committee of the Whole placed it there.

MR. BIGGS. But during the discussion of this question it was shown that a great injustice had been done to Butte County. We have but one lawyer, and he is not on the Judiciary Committee. Had he been there, the county would not have been overlooked. I am in hopes Butte County will be put in the first-class counties. We are able to pay a fair salary, and we want a competent Judge. I hope the amendment will be voted down; and let us adopt the report of the Committee of the Whole, and when it comes to second reading, we can formulate this matter and get it into proper shape.

THE PRESIDENT. The question is upon the adoption of the amendment.

Lost.

MR. WEST. Mr. President: I offer an amendment to section seventeen.

THE SECRETARY read:

"In line eight, strike out the words 'thirty-five hundred,' and insert 'three thousand.' In line eleven, strike out the words 'four thousand five hundred,' and insert the words 'four thousand.'"

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I believe that the objection of the majority to the amendment of the Committee of the Whole was in regard to salaries. I believe the majority of this Convention will agree to give Judges of the first class four thousand dollars; of the second class, three thousand dollars; and of the third class, two thousand five hundred dollars. I offer this in order that the Convention may vote on this distinct proposition of salaries. I would ask to have it divided, so as to vote on each separately. Now, sir, I am not in favor of degrading the judiciary; but I do think, in these times, that four thousand dollars a year, for four years' services, will be a good compensation, and will not debase or degrade the judiciary. I believe we have in Los Angeles quite a number of eminent and respectable lawyers who would consider four thousand dollars a year a good salary. I believe what is true of that county, is true of other counties in the State. I have been sent here in the interest of economy and reform, and I believe every other member who was sent here for that purpose will conscientiously say that four thousand dollars is sufficient and ample. I desire that the vote be taken separately on the three classes.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: If this amendment is voted down I propose to offer an amendment, for the purpose of getting this question segregated, so as to reach a decision one way or the other. We have not been able to arrive at any definite conclusion, from some cause which nobody can see. So long as we put the salaries and the counties together, we will never arrive at a conclusion. We have been trying it every possible way. Twenty or thirty different amendments have been offered, and they have all been voted down, and there is no prospect of ever reaching a conclusion in that way. I propose to offer an amendment dividing the Judges into classes, so as to leave the classes to be filled. Possibly we can get a decision one way or the other. It will be a great struggle to agree, but possibly we may be able to do so. Say the first class shall receive an annual salary of blank dollars, the second class a salary of blank dollars, and the third class a salary of blank dollars. Then when we get it in that condition we may be able to fill the blanks. I shall formulate such an amendment and offer it if this one is voted down.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: If this amendment shall be voted down, and the proposition which the gentleman from Marin proposes to offer shall be voted down—and I suppose it will—I intend to offer an amendment. [Laughter.] It has no particular bearing on the present proposition, but is in relation to the future. We have made no arrangements for the future. It is to the effect that after the next census, and every ten years thereafter, the Legislature shall classify the counties according to population, and determine the number of Superior Court Judges for each county, and fix the compensation thereof according to such classification. Counties having a population of twenty-five thousand or less, shall be entitled to one Judge; counties having more than twenty-five thousand, are entitled for every additional thirty thousand, or any fraction thereof exceeding ten thousand, to an additional Judge. That provides for the future. I may, if I have a chance, offer this as a guide to the Legislature.

THE PRESIDENT. The first question will be on striking out "three thousand five hundred dollars" in the eighth line, and inserting "three thousand dollars."

Division was called for, and the amendment adopted by a vote of 60 ayes to 51 noes.

THE PRESIDENT. The question is on striking out in the eleventh line, "four thousand five hundred dollars," and inserting "four thousand dollars."

Division was called for, and the amendment adopted by a vote of 76 ayes to 34 noes.

RECONSIDERATION.

MR. BIGGS. Mr. President: I gave notice that I would move to reconsider the vote by which what was known as the McCallum amendment was adopted. I now move to reconsider that vote by which that amendment to section seventeen was adopted. I am in hopes it will be reconsidered.

MR. ANDREWS. Mr. President: I hope the motion will be reconsidered. This amendment was voted down a number of times, but the gentleman from Alameda, Mr. McCallum, seemed determined to force it on the Convention. These are State Courts, and it seems to me the salaries ought to be paid by the State. I hope the motion to reconsider will prevail.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: If this Convention is disposed to an act of gross injustice, they will reconsider the vote by which a fair proposition was adopted, dividing the expense between the State and the counties. Now, sir, I have not made a calculation exactly, but I believe the judicial force is distributed about one sixth to San Francisco, and about half of the taxable wealth of the State is there; and you now propose to impose this extra burden of sixty thousand dollars a year upon the people of San Francisco, to support the Courts in the interior. I admire the zeal with which gentlemen from the country advocate the proposition. This is not a sectional matter, it is a question of justice. No member, no matter where he comes from, ought to be willing to do an act of plain injustice. It is not the fact that these are State Courts in the full sense. The old District Courts are State Courts, and there is a good reason why they should be paid by the State. But the Superior Courts not only take their place, but also the place of the County Courts, which now do all the county business, and are paid by the counties. You are adopting a county system, and these Judges are county officers. They are not State officers or county officers, except as we make them such. They are county officers just as much as the County Judges are county officers. We have wiped out fifty-two County Courts, and incorporated the Courts into these new Courts. Now you propose to throw the whole burden upon the State. It is plain that it will operate unequally. I could not consistently go home and face my constituents, and say that I did not raise my voice in opposition to such a plain injustice. The people of San Francisco are generous to the country. We are already educating your children. We pay annually seventy thousand dollars or eighty thousand dollars for the support of education in the interior. Now you want us to support your judiciary. It is wrong. This is a very fair proposition already, to divide the expense with you.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I hope this motion to reconsider will not prevail. I hope it will be allowed to stand. It is no more than fair that each should pay half. It is an unfair proposition to require one county, not only to pay its own Judge, but, in addition, to pay for the Judge of some other county. By requiring each to pay half, the inequality is remedied to some extent. Of course, we cannot get exact equality, but we come nearer to it by requiring each to pay half than we will by requiring it all to be paid out of the State treasury. Some of these small counties which are not, in fact, able to stand all the expense, will be greatly assisted by a provision of this kind. That is all right, provided the State is willing to assist them to that extent. If there are any counties which are so poor that they cannot afford to pay the half of three thousand five hundred dollars a year, let the delegations come forward and ask this Convention to put them in a lower class. Let the counties pay half and the State half, and the Legislature will not be lobbied to death every session for an increase of salaries for this county and that county. If the salaries are paid out of the State treasury, there will be all sorts of contrivances to get additional Judges and more pay. The representatives from one county will vote for some scheme in return for an equal favor from the representatives of some other counties. There is too much of it done, and it will continue to be done, unless there is a check put to it. This is one of the reasons why I am opposed to making this change. I hope it will be allowed to remain as it is.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I see no way out of this thing but to adhere to the report of the Judiciary Committee. It is evident that the more we flounder about the farther we get from the right. Now, it was said the other day that San Francisco had seceded under the command of my friend, Judge Hager. Now I am more than ever satisfied that it is true since the remarks of the gentleman from San Francisco, Mr. Barbour. We have adopted a State system of Courts. He says San Francisco pays half the taxes. Now, if there is any principle established in relation to taxation it is that all property shall be taxed throughout the State for the State. There would be just as much logic in saying, when you come to levy taxes for the support of Government, that San Francisco should pay only half. There is no justice or safety in any other rule than that which taxes the property of the whole

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State for the support of the State Government. Whenever you depart from that rule you will find yourself at sea on an ocean of confusion. Now, sir, it would be infinitely better to go back to the old system of District and County Courts than to adopt this system with such a rule of taxation, because then we know where we are. If we have a County Court it is a county institution to a certain extent, though not to the full extent—not to the extent that is pretended here. How is it that you want the county to pay half, when you admit that they are State Courts? Following up the argument of the gentlemen here, it would seem that the county is no part of the State, and that when you are taxing the people of the county you are not taxing the people of the State. That is the logic of their proposition, and a most extraordinary proposition it is too. It is a monstrous proposition to exempt property in San Francisco which has been made in the interior. I am opposed to this whole juggling scheme, and I will never vote for it. I would rather see the Constitution go down than to see any such pernicious principle engrafted upon it.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. President: I feel a good deal of reluctance in offering any suggestions upon the amendment now before the Convention, or even upon any other legal proposition. I see so many of these venerable Grangers, who have been engaged all their lives in an occupation so foreign to that involved in this subject, who know so much more about it than the most distinguished lawyers and jurists of the State, and so many young men like the distinguished jurist from San Francisco, Mr. Stedman, whose first growth of mustache has not yet reached the full length, and who are so prolific of suggestions—I say all these things are calculated to produce a great deal of hesitation upon the part of a young man like myself, who has only been at the bar a matter of thirty years. [Laughter.] Now, there are several reasons why I am opposed to this measure. It has been said that these Superior Courts are county institutions. I deny it, sir. I say they constitute a State judiciary system. The whole legal and equitable power of the State is lodged in these Courts, and each one of these Courts is but an arm of this great system. This is a State institution. The people of Siskiyou have just as much interest in the administration of State justice, of State law, and State equity, in Sacramento County, as they have in their own county. So much for the theory of it. And it is because it is a State institution that the State and not the counties should pay, as the State has always paid the State judiciary, ever since eighteen hundred and forty-nine. The next reason is, that it is absolutely disgraceful to subject the judicial officers of this State to any such proceedings, whereby they have to take their pay in depreciated county scrip, and then traffic with the banks in order to get money to live on.

My third objection is founded upon this consideration. I think if there is any class of officials in the land who ought to be thoroughly independent, it is the judiciary. The Judge of a county ought to be entirely free from any connection with the county business. In order that he should be, he should draw his pay from the great broad State—from the State treasury—where he will have one unvarying source to get his salary from. He can feel like he is a free man, dependent upon no man. There is great inequality necessarily in classifying by population. According to the plan suggested by Judge Hager, a county having thirty-five thousand people would have two Judges, and a county having twenty-four thousand would only have one. Besides, population is not a good test in this matter. Take Mendocino, or some other of the small counties, and either one of them may have two or three times as much litigation as there is in Sacramento, and consequently a great deal more for a Judge to do. This is actually the case in many instances that I know of, and it tends to show the utter absurdity of this thing. These are the reasons why I shall not vote to reconsider.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: The reasons why the Superior Courts are State Courts have been very fully explained on this floor. It is true that the judiciary system of the State rests on these Courts to a certain extent. But, sir, we have already provided, that for the trial of rights in regard to real estate in Sacramento, the proceedings shall be had in the Sacramento County Court. The property rights of citizens of Sacramento are to be tried before the Superior Judge of Sacramento County; and what difference does it make whether he is called Superior Judge or County Judge? County Judge did not sound sufficiently dignified for a Court of general jurisdiction, so we changed the term. He is the Judge of the county. He tries no criminal cases except those which arise in his own county; he judges cases in regard to the rights of property which arise in his own county, and only those. If a man who resides in Los Angeles wants to sue a man in Sacramento, it can be tried here, it is true. But the Sheriff of Sacramento County may be called upon to serve a process for some man in Los Angeles; and there is just as much reason for saying that the Sheriff is a State officer as that the Judge is a State officer.

MR. EDGERTON. The Sheriff cannot serve it out of his own county, and the Judge can hold Court all over the State. An action for ejectment from land in San Diego can be brought any place.

MR. CROSS. No, sir.

MR. SCHELL. Cannot a case be changed from one county to another?

MR. CROSS. Certainly; but that is an exception. That brings me to the next proposition. The Superior Judge takes the place of the old County Judge, who has always been paid out of the county treasury, and of the District Judge who was paid out of the State treasury. Now, these two functions are combined in one man, who is to be County Judge and State Judge, so to speak, and I can see no earthly reason why the county should not contribute a portion of his salary. Now, the strongest argument in its favor is that which has been repeatedly made on this floor. It is recognized as a fact that the Legislature will be besieged at every session for an increase of salaries. This will certainly be the case if these salaries are paid out of the State treasury. If we provide that the counties shall pay part, there will not be any such applications unless there are good reasons to back them.

THE PRESIDENT. The question is upon the motion to reconsider.

Upon the motion to reconsider, the ayes and noes were demanded by Messrs. Barbour, Larkin, Barton, Doyle, and Vacquerel.

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

AYES.

Andrews,	Graves,	Porter,
Ayers,	Hale,	Reed,
Barry,	Holmes,	Schell,
Barton,	Howard, of Los Angeles,	Shoemaker,
Biggs,	Howard, of Mariposa,	Smith, of 4th District,
Boggs,	Huestis,	Soule,
Boucher,	Hunter,	Steele,
Brown,	Jones,	Stevenson,
Burt,	Kelley,	Sweasey,
Campbell,	Larue,	Swing,
Charles,	Mansfield,	Tinnin,
Cowden,	McFarland,	Townsend,
Crouch,	McNutt,	Turner,
Dunlap,	Mills,	Waters,
Eagon,	Morse,	West,
Edgerton,	Murphy,	Wilson, of Tehama,
Filcher,	Noel,	Winans,
Garvey,	O'Donnell,	Mr. President—56.
Glascock,	Ohleyer,	

NOES.

Barbour,	Hilborn,	Reynolds,
Beerstecher,	Hitchcock,	Rhodes,
Bell,	Hughey,	Ringgold,
Caples,	Inman,	Rolfe,
Condon,	Joyce,	Schomp,
Cross,	Kenny,	Shafter,
Davis,	Keyes,	Shurtleff,
Dean,	Kleine,	Smith, of Santa Clara,
Dowling,	Laine,	Smith, of San Francisco,
Doyle,	Larkin,	Stedman,
Dudley, of Solano,	Lavigne,	Swenson,
Evey,	Lewis,	Thompson,
Farrell,	Lindow,	Tully,
Freeman,	McComas,	Tuttle,
Freud,	McConnell,	Vacquerel,
Gorman,	McCoy,	Van Dyke,
Grace,	Moffat,	Van Voorhies,
Hager,	Moreland,	Weller,
Hall,	Nason,	Wellin,
Harrison,	Nelson,	Wickes,
Harvey,	Neunaber,	White,
Herold,	O'Sullivan,	Wilson, of 1st District,
Herrington,	Pulliam,	Wyatt—70.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole, to section seventeen.

MR. GLASCOCK. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert in line eleven, after 'Nevada,' the words 'Butte, Colusa, Amador.'"

REMARKS OF MR. GLASCOCK.

MR. GLASCOCK. Mr. President: It is the desire of the people of Colusa County that it be placed in the list of first class counties. We do not claim that either upon population or taxable property; it is simply because of the amount of business done in Colusa County. I hold in my hand the calendar of the last term of Court there. There were ninety cases. I have in my possession the entire number of cases entered in the District Court in the last twelve months—two hundred and twenty-five. The entire number of cases in the County Court was eighty-six. The number of cases in the Probate Court, I do not remember, but altogether they amount to more than one for every judicial day in the year. It is the anxious desire of the people of that county to be placed in the first class list.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I have corresponded with a great many persons in Colusa County who make the same statement. It is well known that Judge Belcher has tried to get this in the report, but being a modest man, never could get the floor. He will tell this Convention that there were one hundred cases on the docket. We have to-day on our trial docket over one hundred cases; and there are over three hundred and fifty cases during the year. Our population is between twenty thousand and twenty-five thousand, and we pay taxes on eleven million or twelve million dollars. We have no objection to paying half of a first-class salary. The Butte delegation is united on this proposition. I ask Judge Belcher to make a motion to include Butte and Colusa, and I ask the Convention to do me the kindness to grant the prayer of the citizens of those counties. We have the wealth, and I am sorry to say we have the litigation.

MR. TULLY. Mr. President: I hope this amendment will not pass, and that these gentlemen will remain where they are. There are plenty of lawyers in the country who never made one thousand dollars a year, and they will be perfectly willing to take these positions. When you can get a Judge cheap, I think it is best to get him. There is no trouble about getting Judges, for there are plenty of lawyers who will take these positions at any price.

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REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. President: I hope gentlemen, when they vote upon this amendment, will realize what they are doing. We cannot get absolute equality if we stay here till Christmas. It is absolutely unfair to take one county out of a class and place it in another, where it is not entitled by population to be placed. That is just what is being attempted here. We must have some basis to be guided by, and then we must abide by it. If we deviate from that we are all at sea, for this gentleman will claim an exception in favor of his county on account of some peculiarity, and another on account of some other peculiarity, and so on. One will have more litigation in proportion to population. The only thing we can safely be guided by is population. It will not do to lift one county right over a dozen that have more population. The only thing to do is to stick right to this classification. If you do not take population as a gnide, then what will you be guided by? It will not do to go by population in one case, and by the calendar in another.

MR. BIGGS. Last year Butte County raised twenty thousand bushels more grain than any other county in the State; she produced more gold and more lumber.

MR. DAVIS. I move the previous question. [No second.]

MR. EAGON. Mr. President: I ask the gentleman from Colusa to insert Amador in his amendment. [Laughter.]

MR. HILBORN. I would like to have him insert Solano also. [Laughter.]

MR. SHAFTER. Please insert Marin. [Laughter.]

MR. WHITE. Insert Santa Cruz.

MR. ROLFE. And San Bernardino also.

THE PRESIDENT. The question is on the amendment.

Lost.

MR. HAGER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after 'diminished,' as follows: 'After their election nor.'"

MR. HAGER. That is, that their salaries shall not be decreased nor diminished after their election nor during their term. The Supervisors might act after their election and before they are sworn in.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Hager.

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole to section seventeen as amended.

The amendment as amended was concurred in.

RECONSIDERATIONS.

Mr. KEYES. Mr. President: I wish to call up my motion to reconsider the vote by which the Convention refused to adopt the amendment of Mr. McCoy to section twenty-four, and also the vote by which the recommendation of the Committee of the Whole was adopted to section twenty-four.

THE PRESIDENT. The question is on the motion to reconsider the vote by which the Convention concurred in the amendment of the Committee of the Whole to section twenty-four.

MR. TULLY. Mr. President: Yesterday I voted for section twenty-four, but I have turned another somersault. I hope it will be stricken out. I was of the opinion that it would require a good deal of ability and learning to fill these positions, but I have changed my mind, and I want it stricken out, because my friend Larkin, of El Dorado, may have aspirations that way and this section would bar him out. [Laughter.] I think anybody who can get himself elected as Superior Judge, ought to serve whether he knows anything about law or not. [Laughter.]

MR. WATERS. I move to lay the motion to reconsider on the table.

Carried.

MR. CAMPBELL. Mr. President: On yesterday I gave notice that I would to-day move to reconsider the vote by which the Convention refused to adopt the amendments to section nineteen. There was some misunderstanding, I think, on the part of some gentlemen. The section as adopted by the Committee of the Whole, is as follows: "Judges shall not charge juries with respect to matters of fact, but may, except in criminal prosecutions for libel, state the testimony and declare the law." By the act of the Convention yesterday the words "except in criminal prosecutions for libel," were left out because it was supposed that the section was necessary inasmuch as it was believed that it was all provided for in the bill of rights, which says that in that class of cases the jury are to be the judges of the law as well as the facts. The object is to let the jury have the case to determine unbiased by any declaration of the Court. It is idle to say that the Judge may declare the law, and then that the jury are to determine the law. The two things are in opposition. One contradicts the other. Now, if the jury have power to determine the law in the same manner, and to the same extent as they do in matters of fact, then it is not proper for the Judge to declare the law. I therefore move to reconsider the vote.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I am sorry that the Convention in its wisdom saw fit to non-concur in this amendment. I believe in all criminal cases, where there is a jury, the Judge should be debarred from stating the testimony to the jury, for the simple reason that if the mind of the Judge is biased in any degree his mind will always lean, and he will be found to dwell upon the strongest points in favor of the side to which his feelings are most inclined. And if the jury is to judge of the weight of the testimony and the credibility of the witnesses, they ought to judge of that testimony as it impresses itself upon their minds, not as it impresses itself upon the mind of the Judge. The strong points of the testimony, on the one side or the other, stated over concisely to the jury at the very last moment, would have great influence upon their minds. They would have their particular attention called to them when otherwise, perhaps, their minds would be more apt to compare the whole of the testimony in the case. Now, the testimony can be stated to the jury in such a manner that it amounts practically to a charge upon matters of fact, and yet not amount to an error that can be taken advantage of. Now, in relation to this subject of libel, what propriety is there in allowing—where the jury are the judges of the law and the fact—the Judge to put that testimony before the jury so that it will amount practically to a charge with reference to matters of fact? There is no sense in it; there is no propriety in it. It is virtually robbing the jury of the prerogative conferred upon them by another section. This section ought to remain in.

MR. HAGER. Mr. President: This is substantially the old Constitution. Why should we change it? I hope there will be no reconsideration.

MR. CAMPBELL. The reason is that Judges have disregarded it, and claim the right to instruct the jury upon matters of law in libel cases.

MR. HAGER. Let them do as they have done heretofore. I don't know that the press requires any more protection than they have had.

MR. HERRINGTON. Is it any reason why we should perpetrate a wrong, because it has been done in the past?

MR. HAGER. I don't know that it has been wrong. I have never understood why the press should have any more protection than anybody else. I have changed my notions on that matter. I presume they should be under the law just like any other individual, and have no special privileges. They are not of any more exalted character; they are not exempt from sin. They have their rights guaranteed, and that is all they ought to ask. It is all I am willing to concede.

THE PRESIDENT. The question is on the motion to reconsider.

Division was called for, and the motion was lost, by a vote of 38 ayes to 49 noes.

THE PRESIDENT. The question now is: Shall this article be engrossed and read a second time?

MR. SHOEMAKER. I move the previous question.

THE PRESIDENT. The Convention is ready to take a vote now.

Carried; and the article ordered engrossed and read a second time.

RIGHT OF SUFFRAGE.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to the report of the Committee on the Right of Suffrage.

THE SECRETARY read:

"SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the election precinct in which he claims his vote ninety days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; provided, that no native of China shall vote at any election; provided further, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector; provided further, that no person hereafter convicted of the embezzlement or misappropriation of public money, while holding office or employed in the public service, shall ever exercise the privileges of an elector, or hold any office whatever in this State."

MR. BEERSTECHER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'ninety days' in the sixth line, and insert: 'when in cities of over twenty thousand inhabitants, thirty days; and in other precincts, ninety days.'"

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: The present law requires a residence of thirty days. The reason given for this change is that it will prevent the colonization of voters. Now, in no city in this State has there been any grievance resulting from the colonization of voters—the grievance rests solely and alone in the country districts. If the gentlemen desire to require a residence of three months in the country districts before a man can vote, very well. We are willing to make the change for them. But as the grievance which has been the cause of this change does not exist in the cities of this State, there is no reason why it should be changed; and there is every reason, in the larger cities of this State, why this change should not be made. In the country the precincts are large. The territorial limits are large. They don't move from one precinct into another. If their residence is in one precinct they are likely to remain there for at least one year. Houses and lands are rented for the term of one year; whereas, in the city the term is from month to month, for thirty days, no longer. The precincts in the city are of limited extent. The Palace Hotel is in itself one precinct in San Francisco, and under that section a person living and boarding in that hotel, occupying rooms there, or, if you please, they work there as servants, if a man leaves that hotel and goes across the street to the Grand Hotel, only about sixty feet distant, he is disfranchised for three months. I am unable to see the justice of it. There are a number of men in that city who work on the water front, and they are in the habit of moving their families to the particular part of the city that they are working in, taking a house or rooms for one month. When work ceases in that part of the city, they move to some other place. There are one hundred and thirty precincts in that city, and people are continually changing and moving about. They do it from necessity; and if from any cause they go from one precinct to another, perhaps only across one street, they are debarred from voting for ninety days. It is unjust to the people of that city, and I protest against it. There is no necessity for the change. There is nothing that requires the limit to be raised

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from thirty to ninety days. There is no occasion for it. I hope, sir, that the amendment will prevail.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. It seems there is just as much argument in favor of the country. It is not so easy to colonize in the country as in the city.

MR. BEERSTECHER. Do you know anything about the city?

MR. SMITH. Yes, sir; I lived in San Francisco longer than you have. I have lived in the State all my life. Now, it seems to me that ninety days is too long a time. It will certainly have the effect of disfranchising more than is necessary. It will certainly be a great injustice, which, in the county where I reside, will work a hardship. There are a large number of laborers in that county who cannot reside permanently in any one place. They stay in the county, but reside in different parts of it, wherever they can get work. It seems to me that sixty days would be ample. I see no reason for discriminating against the country. On the contrary, if there is any discrimination it ought to be in favor of the country. I shall favor the amendment for sixty days.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: The proposition—I am satisfied the Convention don't clearly understand the effect. In its effect it will disfranchise a large number of people in every county in the State. No man will desire that. No man should seek by any means to disfranchise votes. When you prescribe that a man shall reside one year in the State, in the county three months, and thirty days in the precinct, you have obviated the opportunity of colonization. Under the old Constitution, thirty days in the county was all that was required. In my county this change would disfranchise a large number of men who are engaged in the mountains in Summer. There is no necessity of this. I hope the amendment will be made applicable to the whole State. I shall offer an amendment to that effect.

MR. BEERSTECHER. I will accept the amendment.

THE PRESIDENT. If there be no objection, the gentleman will have leave to modify his amendment.

THE SECRETARY read the amendment as modified:

"Strike out 'the election precincts,' in line six, and insert 'county.' Also, insert, after 'ninety days,' in line six, 'and in the election precinct thirty days.'"

SPEECH OF MR. EAGON.

MR. EAGON. Mr. President: I hope none of the amendments will be adopted. The only reason given is, that certain persons in the city who are constantly moving about, may be deprived of their votes. Now, sir, there can be no rule adopted which will not work some hardship. The idea of the committee was this, to prevent fraudulent voting. It would be better that a few should be deprived of their votes, by reason of moving about, than that the election laws should be grossly violated by men who are not residents of the districts. If this rule is adopted, colonization will be made very easy in the cities, for men can be changed from one ward to another in thirty days who have no right to vote there, who do not live there and do not intend to live there, and thus the will of the people may be defeated. I hope that this section will be adopted, and that ninety days will be the rule. Large bodies of men might be taken to San Francisco for the purpose of carrying an election, because it would only be necessary to keep them there thirty days.

MR. SMITH. They would have to be in the county ninety days under this amendment.

MR. EAGON. There are officers to be elected in different portions of the county. These voters may be changed from one part of the county to another in order to elect certain officers. I hope the report of the committee will be carried out; it will meet the wishes of the people. You may disfranchise a few, but you must remember that the rule works both ways, and every illegal vote that is cast disfranchises a legitimate voter. Besides, as I understand it, a man does not lose a residence in one place till he gains it in another. In that case, if it is so held, these men who move around will not be disfranchised. Our object was to stop illegal voting, and I hope it will pass.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: The question before the Convention is simply this: Shall we leave the way clear, as it has been in the past, for this system of colonization, or shall we concur in this report and prevent that system of colonization which has corrupted our politics all over the State? Which will you have, gentlemen? Will you have a fair ballot, or will you open the door to fraud, as it has been opened in the past? Gentlemen say colonization would not be practical in thirty days. Experience has shown to the contrary. It has been done, and we have a right to judge the future by the past. What is to prevent corporations from sending hundreds of men from one locality to another in local elections? When Supervisors are to be elected at different times in a county, what is to prevent the colonization of voters where great interests are at stake? Absolutely nothing. The gentleman from San Francisco seems to think that the cities alone suffer. I will say to the gentleman that more men have been disfranchised in the country than in the city, because there is a large voting population. The element which comes to the country to work in summer suffer in this respect, and, as a rule, thirty-three per cent. of that element is disfranchised under the law. Nobody complains, because it is a recognized fact that registration laws are necessary to protect the ballot box, and men submit. Why should they not submit to this provision, which is even more necessary than the registry law? I call upon members to reflect upon this subject. It is one of vast importance. It is right that men, under certain conditions, should be deprived of their votes, in order to secure the purity of the ballot box. The county will suffer more than the city, and yet the gentleman makes an exception in favor of the city.

MR. BEERSTECHER. As the amendment reads now it applies to all alike.

MR. CAPLES. I did not know that. I am opposed to it, however, because I am opposed to colonization.

MR. RINGGOLD. Mr. President: I am in favor of the proposition. This rule of colonization works both ways. There are business men in San Francisco who employ hundreds of workmen, and if their politics don't suit, they discharge them about election times and employ others. I am in favor of the proposition.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope this amendment will pass. Now, the gentleman from Amador alludes to the evil of colonization, which the ninety day rule will prevent. Now, sir, I undertake to say that a thirty day rule is all that is necessary to correct these abuses. There is no danger of men being colonized in the precinct for thirty days. The gentleman from Sacramento wants to know if we want to open wide the door to fraud. No, sir, we are seeking to close up the already wide doors. We require a residence in the county for ninety days, and in the precinct for thirty days. There has never been any rule requiring a residence of more than fifteen days in the precinct. So we are doubling the time in the precinct, and increasing the term of residence in the county from thirty to ninety days. Why then should the gentleman pervert the issue by appealing to us not to throw open wide the door to frauds when we are actually closing the door. I think it would be sufficient for the Constitution to require ninety days in the county, and leave the rest to the Legislature. But I am willing to put in the thirty day rule as to precincts if it is deemed best. There is no sufficient reason for colonizing men for thirty days. Certainly the election of Supervisors will not justify it, and the ninety day rule will prohibit the colonization of counties.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I am willing to go as far as any man to protect the purity of the ballot box. I believe that to put in a fraudulent vote is no better than stealing. But, sir, while I am willing to do that, I am not willing to inflict a punishment upon a person in every way qualified and eligible, by preventing him from casting an honest vote, by such a provision as that proposed here. Now, for the sake of preventing a fraudulent vote now and then, do you propose to disfranchise honest citizens by the wholesale? It is a monstrous proposition. I am utterly opposed to an ironbound provision like this.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment.

The ayes and noes were demanded by Messrs. Condon, O'Sullivan, Doyle, Brown, and Larkin.

The roll was called, and the amendment was adopted by the following vote:

AYES.

Andrews,	Harrison,	Reynolds,
Ayers,	Herold,	Ringgold,
Barbour,	Herrington,	Shoemaker,
Barry,	Hughey,	Smith, of 4th District,
Barton,	Hunter,	Smith, of San Francisco,
Beerstecher,	Joyce,	Soule,
Bell,	Kenny,	Stedman,
Burt,	Keyes,	Sweasey,
Condon,	Kleine,	Swenson,
Cross,	Larkin,	Swing,
Davis,	Lavigne,	Tully,
Dean,	Lindow,	Vacquerel,
Dowling,	McCoy,	Van Dyke,
Doyle,	Moffat,	Walker, of Tuolumne,
Evey,	Morse,	Waters,
Farrell,	Murphy,	Wellin,
Filcher,	Nelson,	West,
Freud,	Neunaber,	Wickes,
Garvey,	O'Donnell,	White,
Gorman,	Ohleyer,	Wilson, of Tehama,
Grace,	O'Sullivan,	Wyatt,
Graves,	Pulliam,	Mr. President—67.
Hager,		

NOES.

Biggs,	Hilborn,	Nason,
Boggs,	Hitchcock,	Porter,
Boucher,	Holmes,	Reed,
Brown,	Howard, of Los Angeles,	Rhodes,
Campbell,	Howard, of Mariposa,	Rolfe,
Caples,	Huestis,	Schell,
Charles,	Inman,	Schomp,
Cowden,	Jones,	Shafter,
Crouch,	Kelley,	Shurtleff,
Dudley, of Solano,	Laine,	Steele,
Dunlap,	Larue,	Stevenson,
Eagon,	Lewis,	Thompson,
Edgerton,	Mansfield,	Townsend,
Estey,	McComas,	Turner,
Freeman,	McConnell,	Tuttle,
Glascock,	McFarland,	Van Voorhies,
Hale,	McNutt,	Weller,
Hall,	Mills,	Wilson, of 1st District,
Harvey,	Moreland,	Winans—57.

MR. AYERS. Mr. President: I offer an amendment to the section.

THE SECRETARY read:

"Add to section—'provided, further, that the Legislature may, by

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law, remove in whole or in part, the disabilities to exercise the elective franchise on account of sex.'"

SPEECH OF MR. AYERS.

MR. AYERS. Mr. President: Were I only to consult my own judgment and my individual desire, I should stand immovably upon the principle of striking down, now and forever, all barriers which would prevent women from exercising every political right or privilege which is exercised by men. Our Constitution would no longer be blemished by the assertion of a disfranchisement which is neither based on reason, on necessity, nor on the mandate of natural law. But I recognize public opinion as it exists in this State, and shall not insist that this Convention should exhibit a grasp of intelligence in advance of the people it represents. I do not expect, sir, that the mass of mankind should understand clearly the principles upon which their own changes are founded. We are naturally wedded to our idols, whether those idols be in the realm of substantial entities or of speculative thought, and however easy it may be for us to conform to prejudices rendered venerable by time, we find it exceedingly difficult to emancipate ourselves from the fetters of hoary prescription, even at the stern behest of reason and justice. One of the most astute philosophers of the present age has pointed out this great difficulty in the incipiency of revolutionary reforms, and tells us that, "to see the futurity of the species, has always been the privilege of the intellectual elite, or of those who have learned from them; to have the feelings of that futurity has been the distinction and usually the martyrdom of that elite." But happily, the time for martyrdom of those who advocate female suffrage, has passed, and it is no longer even unpopular to assert that the disfranchisement of one half of the human family is nothing more nor less than a bald and flagrant outrage.

Sir, we have heard on this floor harangues against female suffrage which it would be absurd to dignify as arguments. One gentleman gravely assures us that the ballot belongs to the men, because they have won it by the sword, and must maintain it by the sword. This is the veriest sophistry. The liberty of our people was won by the sword, but behind the sword was the heroic devotion and the uncomplaining suffering and endurance of the women. It was a mutual sacrifice, and one in which the women exhibited as high a courage, and as constant a patriotism, as the men. The result of these mutual sacrifices was liberty, in its national sense, to both sexes; and as the ballot is a mere incident to freedom, one sex has as much right to it as the other. If only those who bear the shock of battle are entitled to the vote, it should, by that gentleman's logic, be limited to the military exclusively, and male civilians, as well as women, ought to be disfranchised. If this gentleman is not prepared to give the ballot exclusively to the army, I submit that his conclusion extending it to civilians only of one sex is illogical and refutes itself. Gentlemen have also raised the objection that women are by habit and style of thought unfit to exercise the function of suffrage. That is an argument which reacts upon those who make it. Women are by habit and style of thought what society has made them, and if their custom of reflection has not run in political currents, it is simply because they have been precluded from exercising political functions. But women enfranchised would start out with a much larger capital to intelligently and correctly exercise their new function than any class which has ever yet been suddenly invested with the right to vote. They are our equals in acquired intelligence, and our superiors in quickness of apprehension and in moral conscience, and their average vote would be nearer a verdict of right on political subjects than that of men. Let me read you a short extract from John Stuart Mill bearing on this point. In a powerful plea for the equal rights of the sexes, he says:

"In the case of election to public trusts, it is the business of constitutional law to surround the right of suffrage with all needful securities as to limitations; but whatever securities are sufficient in the case of the male sex, no other need be required in the case of women. Under whatever conditions, and within whatever limits, men are admitted to the suffrage, there is not a shadow of justification for not admitting women under the same. The majority of the women of any class are not likely to differ in political opinion from the majority of the men of the same class, unless the question be one in which the interests of women, as such, are in some way involved; and if they are so, women require the suffrage as their guarantee of just and equal consideration."

The conscience of the nation is aroused to the great injustice done to women in circumscribing their callings and professions in life, and we have even opened to them a wide range of subordinate positions under Government. While we are conceding to them employment in public trusts, we are morally estopped from refusing to extend to them the right of suffrage. Men are advanced in political life because of their influence over votes. This is their bribe to the dispensing power. What legitimate influence can women bring as long as they are disfranchised? They can only supplicate through their male friends for appointments from those who depend for their positions upon votes. Beyond that they may exercise the blandishments of their sex, and the denial to them of the vote is to give public sanction to the encroachment of an immoral temptation.

But as I have said, Mr. President, I do not expect this Convention to go farther on the subject of female suffrage than public opinion in this State will warrant. I claim, however, that the principle of female enfranchisement is rapidly gaining ground in every intelligent community, and that what is public opinion to-day on this subject will not be public opinion to-morrow. Should this Constitution be ratified, long before it shall have run its course there will be an irresistible public demand to remove the inhibition on account of sex, and I submit that it would be the part of wise statesmanship to adopt the recommendation of the original committee, and leave it to the Legislature at any time to pass a law granting the suffrage to women. This is all the friends of female emancipation ask on this floor. They only demand that the door shall not be entirely shut against the righteous principle they advocate. It is not asking much; you could not concede less without, in my opinion, exercising a wanton act of tyranny.

ADJOURNMENT.

MR. WALKER, of Tuolumne. Mr. President: I move that the Convention do now adjourn.

Carried, by a vote of 71 ayes to 35 noes, and at five o'clock and twenty minutes P. M. the Convention stood adjourned until to-morrow morning at half-past nine o'clock.

ONE HUNDRED AND FORTIETH DAY.

SACRAMENTO, Friday, February 14th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Finney,	Overton,
Belcher,	Gregg,	Reddy,
Berry,	Hale,	Reynolds,
Blackmer,	Johnson,	Shoemaker,
Casserly,	Lampson,	Stuart,
Chapman,	McCallum,	Terry,
Dudley, of San Joaquin,	Miller,	Walker, of Marin,
Estee,	Murphy,	Wilson, of 1st District.
Fawcett,		

THE JOURNAL.

MR. LINDOW. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

RESOLUTIONS.

MR. O'SULLIVAN. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That no scrip for per diem shall be issued to delegates who absent themselves ten days from the sittings of the Convention.

MR. O'SULLIVAN. Mr. President: There have been thirty or forty delegates absent here for the past month, not on account of sickness, that I am aware of, and some of the delegates have gone for good and do not intend to return here. I have a letter here from a prominent citizen of the town of San Buenaventura, informing me that delegates Fawcett and Finney do not intend to return here. There are other delegates, probably, in the same position, and I do not think that it is proper that the State should be put to the expense of appropriating money to pay these gentlemen.

MR. INMAN. Mr. President: I move to amend, by striking out "ten" and inserting "seven."

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MR. O'SULLIVAN. I accept the amendment.

MR. RINGGOLD. Mr. President: I am opposed to all these buncombe propositions. I move to lay the resolution on the table.

MR. EDGERTON (when his name was called). I am utterly opposed to these Cheap John buncombe resolutions. I vote aye.

The ayes and noes were demanded by Messrs. O'Sullivan, Beerstecher, White, Lindow, and Freud.

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

AYES.

Barton,	Holmes,	Reed,
Biggs,	Howard, of Mariposa,	Ringgold,
Dudley, of Solano,	Hughey,	Schell,
Dunlap,	Hunter,	Schomp,
Edgerton,	Laine,	Shafter,
Glascock,	Larue,	Smith, of Santa Clara,
Grace,	Lewis,	Stevenson,
Graves,	McFarland,	Swing,
Hager,	McNutt,	Tully,
Hall,	Mills,	Walker, of Tuolumne,
Heiskell,	Moreland,	Waters,
Herold,	O'Donnell,	Weller,
Herrington,	Ohleyer,	Wilson, of Tehama,
Hilborn,	Porter,	Winans,
Hitchcock,	Pulliam,	Mr. President—45.

NOES.

Andrews,	Harrison,	O'Sullivan,
Ayers,	Harvey,	Rhodes,
Barry,	Huestis,	Rolfe,
Beerstecher,	Inman,	Shurtleff,
Bell,	Jones,	Smith, of 4th District,
Boggs,	Joyce,	Smith, of San Francisco,
Boucher,	Kelley,	Soule,
Brown,	Kenny,	Stedman,
Burt,	Keyes,	Steele,
Caples,	Kleine,	Sweasey,
Condon,	Larkin,	Swenson,
Cowden,	Lavigne,	Thompson,
Cross,	Lindow,	Tinnin,
Davis,	Mansfield,	Townsend,
Dean,	Martin, of Alameda,	Tuttle,
Dowling,	Martin, of Santa Cruz,	Vacquerel,
Doyle,	McComas,	Van Dyke,
Estey,	McConnell,	Van Voorhies,
Evey,	Moffat,	Webster,
Farrell,	Morse,	Wellin,
Filcher,	Nason,	West,
Freeman,	Nelson,	Wickes,
Freud,	Neunaber,	White,
Garvey,	Noel,	Wyatt—73.
Gorman,		

MR. ROLFE. Mr. President: I send up an amendment.

THE SECRETARY read:

"Add to resolution, 'for the time of during such absence.'"

MR. REYNOLDS. I rise to a point of order that was ruled on by the Chair early in the session. I introduced a resolution very early in the session, providing that no member who was absent without leave should draw any salary or per diem. Some one raised the point of order that it was not within the power of the Convention to control the per diem, and the Chair ruled that the point of order was well taken.

THE PRESIDENT. The Chair did not entertain any doubt about the question. I do not think the Convention has any control over it. If they choose to pass any such resolution I have no objection to it.

MR. SHAFTER. Mr. President: I hope that neither the resolution nor the amendment will be adopted.

THE PRESIDENT. The Chair simply expresses its opinion about the action of the Legislature. I do not recollect what that decision was.

MR. REYNOLDS. I would like to have the ruling of the Chair. I raise that point of order.

THE PRESIDENT. The Chair rules that the point of order is well taken, and the resolution is out of order.

MR. KELLEY. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the Secretary of State be requested to furnish to this Convention the amount of stationery drawn by each member of this body.

MR. KELLEY. Mr. President: It has been whispered around this Convention that there has been considerable speculation going on in stationery amongst these members.

MR. EDGERTON. Name them.

MR. KELLEY. I have never heard any names called. I have seen Pages come in here with arms full of stationery for one person, enough to last them their lifetime, provided they die in any kind of season. I hope this resolution will be adopted.

The resolution was adopted.

MR. LAINE. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That nine hundred and sixty copies of the article on judicial department, as ordered engrossed, be printed.

Adopted.

NOTICE.

MR. SCHELL. Mr. President: Notice is hereby given that, on to-morrow, I will move to amend Rule Forty-three of the standing rules of this body, by striking out from line one, the word "ten," and inserting in lieu thereof the word "five."

RIGHT OF SUFFRAGE.

THE PRESIDENT. The Convention will resume consideration of the article on right of suffrage. The question is on the adoption of the amendment offered by the gentleman from Los Angeles, Mr. Ayers.

MR. LARKIN. Mr. President: As this matter was very fully discussed by the gentleman moving the amendment, I move the previous question on the article.

Upon ordering the main question, the ayes and noes were demanded by Messrs. Ayers, O'Sullivan, Steele, Wickes, and Grace.

The roll was called, and the Convention refused to order the main question put by the following vote:

AYES.

Barbour,	Herold,	Neunaber,
Boggs,	Howard, of Los Angeles,	Noel,
Boucher,	Huestis,	O'Donnell,
Caples,	Hunter,	Ohleyer,
Charles,	Kelley,	Porter,
Davis,	Larkin,	Swenson,
Dean,	Lindow,	Thompson,
Dunlap,	Martin, of Alameda,	Tully,
Estey,	Martin, of Santa Cruz,	Tuttle,
Evey,	McNutt,	Van Voorhies,
Farrell,	Mills,	Waters,
Filcher,	Moffat,	White,
Gorman,	Moreland,	Wilson, of Tehama,
Harrison,	Morse,	Wyatt,
Heiskell,	Nelson,	Mr. President—45.

NOES.

Andrews,	Hilborn,	Ringgold,
Ayers,	Hitchcock,	Rolfe,
Barry,	Holmes,	Schell,
Barton,	Howard, of Mariposa,	Schomp,
Beerstecher,	Hughey,	Shafter,
Bell,	Inman,	Shurtleff,
Brown,	Jones,	Smith, of Santa Clara,
Burt,	Joyce,	Smith, of 4th District,
Condon,	Kenny,	Smith, of San Francisco,
Cowden,	Keyes,	Soule,
Cross,	Kleine,	Stedman,
Crouch,	Laine,	Steele,
Dowling,	Larue,	Stevenson,
Doyle,	Lavigne,	Sweasey,
Dudley, of Solano,	Lewis,	Swing,
Eagon,	Mansfield,	Townsend,
Edgerton,	McComas,	Turner,
Freeman,	McConnell,	Vacquerel,
Freud,	McCoy,	Van Dyke,
Garvey,	McFarland,	Walker, of Tuolumne,
Glascock,	Nason,	Webster,
Grace,	O'Sullivan,	Weller,
Hager,	Reed,	West,
Hall,	Reynolds,	Wickes,
Harvey,	Rhodes,	Winans—76.
Herrington,		

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I am sorry to see that certain gentlemen on this floor are in the habit of moving the previous question whenever the question before the Convention does not suit their views, although they will keep this body discussing for days when it is about their individuality or the interest of their little county; but this question is one of vital importance to the State at large, and I protest against this gagging of a few. Mr. President, I have discussed this question when in Committee of the Whole on a standpoint which I think has no more force to-day, as, according to the doings of Congress, the war cry has somewhat changed, and the motto of Chinese can't come can be added to Chinese must go. I intend to express my views from social laws and the immutable laws of nature and equity. The part that the women perform in society is one that has been the most unknown, and the less investigated. There are three prevailing opinions about women and their duties in this world. Some people consider women as being weak and fickle, who, the same as a child, must be kept in guardianship. Others believe that woman must be considered as a dainty and precious flower, which must be kept and preserved at a great expense, and which must keep out of all our anxieties and cares, so as not to fade itself. The third opinion is that women are equal to men, and claims for her all the privileges entitled to themselves. The first opinion is the one of those who, having no faith in themselves, cannot accord any to others, and they take a woman as a slave or an inferior being, but, thank God, those are few. The second opinion is the one of the idealist, poets, and dreamers, who form an ideal of everything and never look at the reality; that class is very numerous, and certainly cannot but be approved in their opinion. But the third opinion is the one of the positivist and materialist; it is the opinion of men who look at things in their true light, and believe in equality, in justice, and in reality. I maintain that between man and woman there is no superiority, no inferiority; there is equality of wants, equality of virtues, equality of vices; the same necessities exist between the two, and the only difference is in the diversity of aptness to perform the same duties. Women, as well as men, possess the right to exercise the faculties that nature has bestowed upon them; and I deny to anybody, be he ever so high situated, the right to confiscate that free exercise for his own ambition. I have said, and I repeat, sir, that there was equality, and the only difference was the diversity of aptness to perform sometimes the same duties. If the principle of equality exists, and I challenge any one to prove to me the superiority of man, therefore in

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voting there is no difference in the aptness. Voting does not require physical strength; it requires judgment; it requires brains; it requires that sense of foresight which the women certainly possess more than men.

Upon what grounds do you want to refuse to beings that are your equals, that possess the same quality to perform the same duties; upon what ground do you refuse them the same rights that you claim for yourselves? Be consistent, gentlemen. The first principle of republicanism is equality, and the first maxim is to accord to others the same privileges that you claim for yourselves. I protest, sir, against any doctrine tending to absolutism. Some gentlemen will object that if women vote they will neglect their family duties. And you men, because you vote, do you neglect your duties? And if you fulfill them, cannot women do it also? Are you better, and do you mean to flatter yourselves so much as to not fail? Some other gentlemen will object, also, on account that women by mixing with men will degrade themselves, and that politics will be equal to depravity. Don't you every day in life mix with women, and still they are honest, and you are also? Some other gentlemen will say that lobbying will be done by women, and that it will be hard to oppose it. Well, gentlemen, it might be hard; but when I have seen the lobbying that has been done in this Convention, I do not know if lobbying done by women could be more obnoxious. Then, gentlemen, according to that theory, you would acknowledge your weakness; and you call yourself the strong sex; and still a woman will make you vote wrong the same as a champagne supper. Then women are strong and you are weak; and, as such, you must accord them the right that you cannot perform as strongly as they could. But, Mr. President, that amendment does not give women the right of suffrage; it provides that the Legislature shall have power, when the people desire it, to give them that right of voting. I tell you, gentlemen, as much solons as we may be, although we think ourselves infallible, we have not the right to determine what the public opinion will be in ten years or fifteen years; and why not adopt this amendment, if the people instruct the Legislature to give women the right of suffrage? I deny to this Convention the power to bind the next generation. The earth moves around the sun, and as progress goes forward, liberal ideas are bound to go ahead. Republican principles are gaining every day, and he who tries to oppose them commits either a blunder or a social crime. Therefore, I hope the amendment will prevail. It cannot do any harm; it can do good; and until I see any good reasons, except a narrow-minded prejudice of backward civilization, I will vote to sustain the woman suffrage, and the amendment offered by the gentleman from Los Angeles.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: The action of this body heretofore shows that no positive provision for woman suffrage can be carried. The friends of the measure, therefore, now only ask that the original provision of the Committee on the Right of Suffrage be adopted. That is the present amendment of the gentleman from Los Angeles, Mr. Ayers. It simply provides that the Legislature may remove the disability of sex. I hope it will be adopted. I know how settled and pronounced is the opposition here to woman suffrage—that it cares not for discussion, and shuts its ear to argument. It is well, however, to remark how opinions sometimes change in this world; how whole currents of history change; how the social, civil, and political condition of large classes of people change. The superb contempt which the proud Templar in Ivanhoe had for Isaac of York, was representative of the feeling entertained in those days, by Norman and Saxon both, against the Jews. And yet it will be noticed that the time came when descendants of the race, represented by Isaac, were among the foremost of Englishmen, and that one of them to-day stands behind the British throne, a power greater than the throne itself. The question, sir, whether or not American women shall be freed from their political disabilities, presents an issue in American politics that is interesting, important, practical, and urgent. It has survived the diseases of infancy; it cannot now be suppressed by ridicule or withered with a sneer. It has received, and is now receiving the earnest attention of some of the best thinkers of this country and of this age. Woman suffrage has already received the support of large minorities of the Legislatures of a large number of the American States, and been adopted in one of the Territories. It has had a most respectful hearing before a committee of the Senate of the United States; and while the report of that committee was adverse, its opposition was mainly on the ground that the proposed change in the elective franchise is a matter more properly belonging to the States than to the General Government. It is indorsed by eminent Congressmen and statesmen; is advocated by leading magazines, newspapers, and lecturers throughout the country, and has many earnest friends in every walk in life. It has many advocates, also, in England—a country still far behind ours in the recognition of liberal political ideas. And more than that, sir, it is in the direction of, it is akin to the other achievements of that grand movement in American and English history which has had for its object the sacred principle of human liberty, and which, commencing with the angry clangor of the half-drawn swords at Runnimede, and struggling on from year to year, from generation to generation, from century to century, gradually, from time to time, struck off most of the shackles that bound the minds and persons of men, and invested the people with most of their inherent rights; until at last, in our own country, it has accomplished by legal enactment, by constitutional declaration, a recognition of the great truth that all American men, at least, are free and equal in their political rights.

But this movement, until within recent years, did not include woman—except so far as she was, to some extent, necessarily included in the great principles which it sought to establish. Her political status has not been changed in the least by this long and glorious struggle. It is the same that it was before the Norman set foot in England. Her general condition has undoubtedly been greatly improved. She is better fed, better clothed, better housed, better educated, better cared for, more respected. But she has no more political rights to-day than the singing birds which you keep in gilded cages, or the horses which you pamper in garnished stalls. She has certain civil privileges temporarily granted her; but, as she had no hand in creating them, so would she be helpless to prevent their destruction. Political power, sir, is the only basis upon which civil or individual rights can be safely rested. We have a striking instance of this truth in this State, at this time, in this Convention. Our desks are groaning under the weight of propositions charged with the purpose of utterly destroying all the civil rights of a large portion of the population of this State. They have come from all quarters—from gentlemen representing all political parties, and every phase of political sentiment and affiliation. It has been stated that there are more than one hundred thousand Chinese in this State. It is well known that nearly all of them are men, over twenty-one years of age. Suppose, sir, that each of those hundred thousand men was a voter, having his right to vote embedded in the Constitution! How many of these propositions would you see here then? Not a solitary one. In that event the guttural grunt of the pig-tailed Chinaman would be as potent in the land as the nasal twang of the native-born Yankee, the "whars" and the "thars" of the southwesterner, the rich brogue of the gentleman from Tipperary, or the sweet accent imported from the vine-clad hills which stud the Rhine. I say this, sir, not because I do not concur in opposition to Chinese immigration, for I think it a great evil, but to show how strong among the forces which protect individual rights in this country is the ballot, and how weak is everything else without it. Civil rights and personal privileges not founded on the rock of political power are as insecure and unstable as a house built on shifting sands. Only a few of the objections to woman suffrage can be noticed in my limited time. It is said that it would unsex woman, and that it is against the laws of God and nature. Unsex woman! Well, sir, if the thing could be done, I would like to witness the wondrous spectacle of a California Constitutional Convention, led by my gallant colleague, Doctor Caples, unsexing a woman. Against God and nature!

THE PRESIDENT. The gentleman's ten minutes have expired.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: I desire to place myself on record in favor of the amendment offered by the gentleman from Los Angeles, Mr. Ayers. I believe in the right of women to the suffrage. We have made suffrage universal so far as men are concerned, including all the ignorance of the country, black and white, good, bad, and indifferent. Now I do not believe that it is right to deny an intelligent woman that which we have granted an ignorant man. Another phase of the question is, that women who are property owners are taxed without representation. This is manifestly a gross wrong, such a wrong as the men of the American Revolution protested against. I believe that this will be successful before many years, though now apparently unpopular. Public opinion on this subject is not yet founded on the basis of an intelligent canvass of the merits of woman's rights. But when the time comes that the subject shall be calmly investigated, this great reform will be granted with very little opposition. Mr. President, to say that women generally do not want the franchise, and that most of them will not avail themselves of an opportunity to vote, is no argument against granting this right. Women who are taxpayers will certainly avail themselves of an opportunity to help in choosing their Assessors and Tax Collectors if the right is granted to them. Mr. President, there are many noble women in the United States who are the peers of any man, and the superiors of three fourths of our present voters, and it is a gross injustice that they should be deprived of votes in this government. All reforms in the infancy of their agitation are unpopular, more through ignorance of their merits than from any other cause. The demand for woman suffrage is of this character. It is founded on eternal justice and will ultimately triumph, like all great truths. With women as voters, I firmly believe that we would have better politics and purer government. The time when woman was made a mere slave to man has passed forever, and her full equality in all rights must be acknowledged in the new era which is at hand.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I have no speech to make, but I wish simply to announce my adherence to the proposition to restore political rights to women. We have heard nothing against it. The fact is, sir, that gentlemen seem to be afraid that contact with women at the polls will certainly reduce women to their level. They admit that men are so corrupt, so debased, and so evil that contact with them on the part of the women, in the performance of one of the most important functions of life—voting—will deprave these women so that the domestic life will be invaded by all manner of evils. Going to the polls to vote, and coming in contact with men in the exercise of their political right, will so degrade them that they will be unfitted for the other positions in the world and in domestic life with the same men. Now, if these men are thus debauched, and are conscious of that fact, possibly we had better endeavor to elevate them by contact with these women. It may do them some good. The women have always been supposed to sacrifice themselves for the benefit of man. I can fancy that people coming from lands where woman is merely a beast of burden; where she walks on one side of a rope and the dog on the other, as in some places in Europe at this day, while the model man smokes his pipe and saunters along at ease, that men should have this degraded idea of women. But how, in the name of God, enlightened men, born in this country, and having the history of this country before them, can entertain such views, I fail to comprehend. You deprive them substantially of the right of petition. Men appear in the Legislature for them. The lowest criminal that is charged before the Court has a right to select his own counsel and appear in person. You deprive women of that right in the legislative

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department of the country. You say that she shall not appear by counsel selected by herelf. She must appear by those whose interests are opposed to what she desires, and you call it the right of petition. You say in the Constitution that they shall not come to the halls of the Legislature; that they shall not come there and influence legislation as regards the disposition of their property, the security of their lives and their relations with their husbands.

Those who hold the reins of government, and who undertake to make laws and interpret laws againt them, are the only ones to be heard on the question. It is true they may send a petition, but it is thrown under the table because it comes from women. If they have not the right to vote, what is the use of undertaking to act through a petition. It all amounts to nothing more nor less than that they have the misfortune, in the mysterious process of nature, to be born female rather than male. That is all. It is a gross outrage, and it cries out against the country and the institution that will do such injustice. There are men here who hear me to-day, who will see the time when women will vote, and they will regret the time when they opposed it too. The gentleman from San Francisco, Mr. Vacquerel, has approached one of the dangers of the future. Who knows but that twenty years from now the Chinamen may vote. No one supposed when the old Constitution was adopted, that there would be one hundred and twenty thousand Chinamen in this State to-day. We do not expect to-day that they will vote. We did not expect twenty years ago that the negroes would vote. How do you know these contingences may not occur, and yet you propose to tie the hands of the Legislature so that they cannot give the ballot to women. It is wrong and imprudent on the face of it. I respectfully submit that this proposition ought to left open to the Legislature, and if we cannot trust the men who come here to the Legislature, we had better begin to distrust ourselves likewise, for they are just as likely to be intelligent and honest men as we are. I for one, sir, have no particular sentimentality upon this subject; but the God of justice rules this world, and there is retribution for those who undertake to violate its laws. You may tie your ropes of sand as much as you please, but justice will prevail in the end.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: On yesterday evening the gentleman from Los Angeles, recklessly, needlessly, and with malice prepense and of forethought, opened his manuscript batteries upon the common sense of this Convention. [Laughter.] The smoke has cleared away, and we are able to report but one casuality, time was the only victim. Mr. President, the question presented here is whether we shall authorize the Legislature to extend the suffrage to females. What is this demand that is being made? Gentlemen tell us that they merely desire that women may have a right to vote. Is this all? No, sir. This fungus growth upon the body of modern civilization is no such modest thing as the mere privilege of voting, by any means. Gentlemen here may be novices, they may be new beginners, they may not be fully educated, and may not know what this demand amounts to; but let us look to Europe. What is the demand in England? The right merely to vote? Oh, no; by no means. The demand is for the abolition of all distinctions between men and women, proceeding upon the hypothesis that men and women are all the same. Now, Mr. President, gentlemen who are so verdant as to believe that this demand is merely to vote, may be excused possibly for assuming that the mere exercise of the elective franchise would not seriously impair the integrity of society, the virtue of women, and the honor of men. But, Mr. President, there is no apology for such a degree of ignorance in this enlightened century, with the telegraph and the newspapers. Gentleman ought to know what is the great and inevitable tendency of this modern heresy, this lunacy, which of all lunacies is the mischievous and most destructive. It attacks the integrity of the family; it attacks the eternal decrees of God Almighty; it denies and repudiates the obligation of motherhood. It undertakes to nullify the decrees of God Almighty in fixing upon women a duty that is imperative, a duty that must be obeyed, a duty that disqualifies her for a rough and tumble contest with men in the struggle of political life. What reason is there for assuming that if these distinctions are all abolished, and women are turned loose in the world upon an equality with men, that they will maintain that high standard of purity and excellence that they have attained to. I am amazed! I confess that I am utterly incapable of comprehending the depth, and the width, and the extent of that ignorance that can conceive of the possibility of such a state of things. Let us illustrate for a moment. Take the case as it would occur in our midst here. Abolish the distinctions; and if you confer the ballot, the rest all comes as a necessary sequence, because the exercise of the elective franchise implies all the corresponding obligations of Government. Women, if they vote, can be elected to office. They would necessarily and naturally drift into primary politics. They would engage in all the tricks and corruption of the low and degrading associations that are inseparable from primary politics. They would be candidates for office. How would gentlemen like to bring this matter home? I ask gentleman to make a practical application of this rule to themselves. They have wives and daughters. Let us suppose your daughter locked up in a jury-room; your wife a candidate for the Legislature, stumping the county. She is the Democratic nominee. Her competitor, a Republican, might be a very ungallant man, and would insinuate that she was not exactly like Cæsar's wife, and finally end by declaring that she was not what she ought to be. Your wife stumping the county; one daughter locked up in a jury-room; the other daughter working on the road; you at home rocking the cradle, and reading a newspaper full of slanders and innuendoes against your wife, who is a candidate. Again, let us suppose that she is elected to a seat upon this floor; what would be the result? Now, Mr. President, we have seen a small illustration of what might be the result, particularly if it be a young and handsome lady. Half a dozen of our members here would be clustering around her like a bouquet. She would be the central figure, and they clustered around, discussing what? Matters at issue? Matters of State? No, beg your pardon, nothing of the kind. Discussing tweedledum and tweedledee, and what not, I do not know; but this I do know, that it would be nothing in regard to matters that would be pending before the Legislature. Perhaps you might happen in here and see your wife thus surrounded. You would think, very likely, that it was not a very pleasant condition of things, and that she had better be at home rocking the cradle, instead of yourself.

Mr. President, the cry is that women are deprived of their rights. Now let us examine this question for one moment. Of what rights are they deprived, and when? The gentleman from Los Angeles has charged me with having said that political power and political sovereignty are the creature of the sword. True, I said so. I did not go back and quote history and drift along down to our day to show how in every instance from the time that the wolf suckled Remus and Romulus, every political sovereignty has been born of the sword, and that political power is nothing but the creature of the sword. If I had been talking to or teaching a school of small boys, I should have done so, but I supposed I was talking to gentlemen who had read history, and if so they must know that the assertion I made is strictly true. I now assert that no government ever has been instituted, and no government ever has been maintained, except alone by physical power; and here is the secret of why men hold the power. Here is the philosophy of manhood suffrage. They say there are ignorant tramps that are permitted to vote, while intelligent females are deprived of the right of voting. Now the reason why the tramp is allowed to vote, is that political power, being the creature of the sword, and the tramp owing military service to his country is merely exercising that power that springs from his ability to maintain the government.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I have not occupied the time of this Convention on this subject during its previous discussion, and I shall not now occupy more than two or three minutes in stating my views upon this subject. Mr. President, I have a very great respect and a venerable regard for the thoughts of antiquity, and even for the forms of antiquity that come down to us in the present time to remind us of those dark days. I remember but a few years ago when Gerritt Smith and Wendell Phillips were lecturing through the country, showing that slavery was inconsistent with republican institutions and democratic ideas, and that it was the virus that would ultimately produce a revolution. I remember then there was these old fossils, these old whited sepulchers, asking us: Do you want your daughter to marry a nigger? Do you want your wife to run away with some old nigger? Do you want to be associated in society with niggers? It is refreshing now, in eighteen hundred and seventy-nine, to hear these same fossilized ideas presented to an intelligent audience. "Do you want your daughter locked up in a jury room? Do you want your wife locked up in a jury room and you at home rocking the cradle? Ha, ha." [Laughter.] These thoughts had their influence upon certain classes of minds, and they will have their influence perhaps on a certain class of minds at the present time; but I say we are living in an age of progress, and that the world is moving, and that, although we may be occasionally reminded of these monuments of the past, yet the world will move. These revolutions of progress will be made, although we may throw ourselves in the way and attempt to impede its progress. I do not know, sir, that the popular sentiment of California is sufficiently educated to indorse or to accept woman suffrage at the present time; but I ask my fellow delegates in this Convention—is it right, is it just, are we discharging the duties assigned to us in this Convention, by impeding the progress and thought of those who may come after us? What right have we by any iron-clad rule in this Constitution, to say that these subjects shall not be discussed; that the people shall not have the right to free discussion, and to instruct their representatives in the Legislature in regard to their wants in this respect? I say we have none. We certainly should leave it just as the Committee on Suffrage reported it to this Convention, making it possible for those who come after us to act as their consciousness of right may dictate. We have no right to stop the wheels of progress and say that they shall not progress any farther than we have done in our limited capacity. I certainly think, sir, in reading history, that just as civilization has progressed, just as enlightened views have obtained prominence, just in the same proportion has woman come up to her original position by the side of man as his equal. What man who possesses the right to be called a man would blush to be seen at the election, or any other place, with his mother, with his wife, with his sister, and recognize this sacred influence that always pervades society where these dear ones, these loved ones, are permitted to associate with us? Never before in the ages that have passed has man needed the purifying and elevating influence of the sex more than society needs it at the present time. I believe, sir, were woman recognized in her proper place now, these mushrooms of vice would be banished from your cities; these saloons and these gambling hells that are corrupting their fathers, brothers, and husbands would be banished. Now, let us leave the future to take care of itself, and if the Legislature in the future sees proper to remove the disabilities from women, in God's name, in the name of right, in the name of humanity, let them be permitted to do it. Throw no blocks in the way of the car of progress. I hope that the amendment will be adopted, and that this Convention will set itself right upon this subject.

MR. CAMPBELL. Mr. President: Believing that we ought to proceed to the transaction of other business; believing that the repetition of speeches made in Committee of the Whole, cannot accomplish any good object; believing that if this Convention continues constantly talking without acting, and believing that it is time to turn off the gas, I move the previous question.

Seconded by Messrs. Huestis, Dean, White, and Lindow.

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The main question was ordered.

Upon the adoption of the amendment of Mr. Ayers, the ayes and noes were demanded by Messrs. Ayers, Freeman, Barton, Brown, and Grace.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Grace,	Schomp,
Barbour,	Herrington,	Shafter,
Barry,	Hilborn,	Smith, of Santa Clara,
Barton,	Huestis,	Smith, of 4th District,
Beerstecher,	Hughey,	Soule,
Bell,	Kenny,	Stedman,
Boggs,	Keyes,	Stevenson,
Boucher,	Lewis,	Sweasey,
Brown,	McComas,	Townsend,
Charles,	McCoy,	Turner,
Cowden,	McFarland,	Tuttle,
Cross,	Mills,	Vacquerel,
Crouch,	Moffat,	Van Voorhies,
Dowling,	Noel,	Walker, of Tuolumne,
Dudley, of Solano,	O'Donnell,	Weller,
Eagon,	O'Sullivan,	West,
Edgerton,	Reynolds,	Wickes,
Freeman,	Ringgold,	Wyatt--55.
Gorman,		

NOES.

Andrews,	Holmes,	Ohleyer,
Burt,	Howard, of Los Angeles,	Pulliam,
Campbell,	Howard, of Mariposa,	Reed,
Caples,	Hunter,	Rhodes,
Condon,	Inman,	Rolfe,
Davis,	Jones,	Schell,
Dean,	Joyce,	Shurtleff,
Doyle,	Kelley,	Smith, of San Francisco,
Dunlap,	Kleine,	Steele,
Estey,	Laine,	Swenson,
Evey,	Larkin,	Swing,
Farrell,	Larue,	Thompson,
Filcher,	Lavigne,	Tinnin,
Garvey,	Lindow,	Tully,
Glascock,	Martin, of Alameda,	Van Dyke,
Graves,	Martin, of Santa Cruz,	Waters,
Hager,	McConnell,	Webster,
Hall,	McNutt,	Wellin,
Harrison,	Morse,	White,
Harvey,	Nason,	Wilson, of Tehama,
Heiskell,	Nelson,	Winans,
Herold,	Neunaber,	Mr. President—67.
Hitchcock,		

MR. RINGGOLD. I call upon the Chair to enforce Rule Sixty-five, and have Mr. Freud vote.

MR. STEELE. I changed my vote from aye to no for the purpose of moving a reconsideration.

MR. BEERSTECHER. I call upon Mr. Freud to vote, under Rule Sixty-five.

THE PRESIDENT. The question recurs on concurring in the amendment of the Committee of the Whole to section one.

The amendment was concurred in.

MR. SHAFTER. Mr. President: I move to strike out the words, "native of China," in section one, and insert "Chinese." There are a good many people who are natives of China who are white people, and who are in this State to-day.

THE PRESIDENT. We are working under the previous question and the amendment cannot be entertained.

ELECTION PRECAUTIONS.

MR. LAINE. Mr. President: I send up an amendment to section five.

THE SECRETARY read:

"Amend section five of the article on suffrage, by adding at the end thereof the following, viz.: 'Every ballot voted shall be numbered in the order in which it shall be received, and the number recorded by the election officers, on the list of voters, opposite the name of the voter who presents the ballot. The election officers shall be sworn or affirmed not to disclose how any voter shall have voted, unless required to do so as a witness in a judicial proceeding. In all cases of contested elections, the ballots cast may be counted, compared with the list of voters, and examined under such safeguards and regulations as may be prescribed by law.'"

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I desire to call the attention of this Convention to this matter; I think it is of some importance. In this State we have been acting under the idea of a ballot, which is a secret vote, of course. The idea is to prevent people from being improperly influenced or governed in the elective franchise. I think we have, perhaps, carried that matter too far. In our efforts to entirely keep the ballot secret, we have opened the door to great evils—to double voting and to fraudulent voting. We may know that, in our county, a hundred fraudulent votes have been cast; men have voted that were not entitled to vote, and we may be able to prove that, but there is no way to prove for whom they voted. In many of the States of the Union attempts have been made to correct this evil. This is found in the Constitution of Missouri, and it is taken, word for word, from that Constitution. [Laughter.] You will observe that by this scheme, when a man goes to the poll to vote he gives his number from the register of voters. If he is the fiftieth man that votes, the ballot is numbered fifty, and the number fifty is placed opposite his name on the poll. The officers are sworn to secrecy, except upon judicial investigation. The ballots are preserved, and the moment a contested election comes up it is absolutely certain who the fraudulent votes have been cast for. I believe it is a measure that will commend itself to the Convention.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. President: I just wish to say that I am satisfied with the system we have now in California. Our election system, I believe, is the best system that has ever been devised by man. It is utterly impossible for any of these landlords that own those large estates to compel their tenants to vote for any candidate which they favor. They cannot tell who does. A man can take his ballot and fold it up, and no man can follow him within one hundred feet of the polls, and he can go in there and cast his ballot. I have seen this system proposed by the gentleman from Santa Clara tried in Colorado during the war. The excitement was high in those times, because we had Union men, and loyal men, and those that were opposed to the Constitution, and said that it was a league with hell and a covenant with death. And we had there old fossils that were raising the secession flag. The tickets were numbered there, and these men that worked for the big landowners in the outside counties, if they did not support their men, they never worked another day on those places. It leaked out some way. I tell you there was a scattering. You could see them packing their blankets in every direction. There is where you could see a turn out of tramps. [Laughter.] I tell you, that when you come to destroy the secrecy of the ballot, you destroy the freedom of the country. I would not give a whoop in—kingdom come, for American liberty if this is adopted. [Laughter.] I tell you, I do not believe this Convention will reform the political morals, or any other morals of this world. When the Convention refuses to give women who pay taxes a right to vote, I do not believe we can improve upon a system that gives every American citizen a right to come up and vote a secret ballot. I tell you this is a subterfuge; it is an invention to wield the party lash, the landlord lash, and the railroad lash, and by their means, to wield tyrannical power over the common people. I am in hopes that the Convention will make the system that we have got perpetual as long as the Constitution stands, and that it will stand while this Government exists.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I do not know how this system has worked, or how it is working in the State of Missouri, but I do know that there was a special law passed, I think in eighteen hundred and seventy-four, in the State of Illinois, to apply to the City of Chicago, and after they had tried it once they abandoned it forever, because it proved to be the most pernicious and most damnable system that had ever been introduced. Just as well might you say that every man that places a ballot in the ballot-box, should take it openly and carry it there, and allow any one that may desire so to do, to read that ballot. If you desire to check fraudulent voting, the check must arise from registration; that is the proper way to check fraudulent voting. Require registration within a certain time, and allow no one to vote upon any certificates, and unless he appear upon the printed register, which printed register shall be exhibited in four public places, if you please, within the voting precinct; then there is no difficulty. The system in vogue in San Francisco to-day is, perhaps, one of the best systems in the world. It reduces the precincts to not more than three hundred voters. It obliges the register of that particular precinct to be published and be exhibited at least ten days before the election. Every person living in the precinct can go there and examine the number and the names of the registered voters, and there is no difficulty at all, sir. If this method were adopted, and the election officers might be sworn that they would not divulge as to who any particular individual voted for, that oath would be violated, it would amount to nothing, and any candidate for office might lodge a complaint in a Court and require the ballots to be brought into the court room, and expose the vote of every particular individual. There would be no sanctity of the ballot, sir; it would destroy the system of the secret ballot entirely, and just as well might you require a man to go and vote *viva voce*.

MR. LAINE. I think no man is fit to vote that is not ready to vote *viva voce*.

MR. BEERSTECHER. You are a man that can be independent; you are independent in your means and circumstances, but if you were a poor laboring man, that was working for a tyrannical master, and that man came to you and said you must leave my employment unless you vote a particular ticket, you would tremble, sir, and you would hesitate before you would leave that man and throw your family upon the cold charities of the world. That was the reason of the establishment of the one hundred foot law. Before that law went into effect in this State, it is a well known fact that we would go with voters to the polls and see their ballots put into the box. This intimidation exists. I believe that if we desire to retain the sanctity of the ballot, and if we desire the voters of this State to be free and untrammeled to exercise their choice, then let us have a secret ballot, let us have no numbers upon that ballot to divulge to any man how any citizen of this State has voted.

REMARKS OF MR. GORMAN.

MR. GORMAN. Mr. President: I hope that this will not pass. I hope the amendment will be voted down, for these reasons: If there was anything, sir, which could control the ballots of the people of this country in the interest of money or monopolies it would be this very thing. Why was the law passed prohibiting colored ballots being used? Because at Mare Island every man that voted there if he did not vote a certain ballot it was known very well, and he was discharged. Now, sir, all that any man employing a great number of men would want

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would be an excuse. They would dictate to every man who worked for them how to vote. I have seen a great number of men discharged because they did not vote in a certain way. The ballots were marked so that everybody could know. There would be no independent voting at all. I hope this will not be adopted.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. I have lived several years where this system was in vogue. It was the only place in America where there is a despotism—in the City of Salt Lake. The Gentiles have tried to abolish this thing there because of the power it gives to the church. It makes one master for the people, and that master which happens to be in power—that power which happens to have the government. Now, sir, if the law prevailed in this State the party in power would hold an iron rod over a large number of voters. Talk about the oaths. Why, they would amount to nothing. The ballots would be on file. The County Clerks could always have them at their hand, and know exactly, and the moment it was known exactly how each man voted, could hold it as a terror over the voters at every election. It would be worse than *viva voce* voting. It has proven so in Salt Lake, and the Gentiles there have fought against it, as I said, more than anything else; for the purpose of bringing down the power of the church. I, for one, do not vote for this amendment.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. President: When this was first introduced I thought it was certainly a very good amendment; but after listening to the gentleman from San Francisco, I must concur with him that it is a little tyrannical. It deprives people of the privilege of voting four or five times, which has been considered a great privilege.

MR. GRACE. How would it?

MR. TOWNSEND. This would detect it. If we had this system, you would know. His name would be down.

MR. GRACE. Doesn't the present system require every man's name to be written down?

MR. TOWNSEND. They would know who he voted for so many times.

MR. BEERSTECHER. Do you suppose that these repeaters ever vote twice under the same name?

MR. TOWNSEND. I do not know. There is one thing we do know, that in case of a contested election, we could know who he voted for. But you are probably better informed in regard to repeaters than I am. I do not know much about that. It would have this merit: It would keep parties up to their contracts. When they sell their votes, and then do not vote as they agree, it would be discovered, and they would be punished in that way. [Laughter.]

Messrs. Van Dyke, Barton, Larkin, Dean, and Huestis demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. Laine, the ayes and noes were demanded by Messrs. Laine, Beerstecher, Brown, Gorman, and Grace.

The roll was called, and the amendment rejected by the following vote:

AYES.

Boggs,	Jones,	Ohleyer,
Boucher,	Kelley,	Shafter,
Glascock,	Laine,	Smith, of Santa Clara,
Hager,	Larue,	Thompson,
Heiskell,	Lewis,	Townsend,
Hitchcock,	Martin, of Alameda,	Weller,
Holmes,	Mills,	Winans—23.
Howard, of Mariposa,	Morse,	

NOES.

Andrews,	Graves,	Reed,
Ayers,	Hale,	Rhodes,
Barbour,	Hall,	Ringgold,
Barry,	Harrison,	Rolfe,
Barton,	Harvey,	Schell,
Beerstecher,	Herold,	Shurtleff,
Bell,	Herrington,	Smith, of 4th District,
Biggs,	Howard, of Los Angeles,	Smith, of San Francisco,
Brown,	Huestis,	Soule,
Burt,	Hunter,	Stedman,
Campbell,	Inman,	Steele,
Caples,	Joyce,	Stevenson,
Charles,	Kenny,	Sweasey,
Condon,	Keyes,	Swenson,
Cowden,	Kleine,	Swing,
Cross,	Larkin,	Tinnin,
Davis,	Lavigne,	Tully,
Dean,	Lindow,	Tuttle,
Dowling,	Martin, of Santa Cruz,	Vacquerel,
Doyle,	McComas,	Van Dyke,
Dudley, of Solano,	McConnell,	Van Voorhies,
Dunlap,	McCoy,	Walker, of Tuolumne,
Edgerton,	McNutt,	Waters,
Estey,	Moffat,	Webster,
Evey,	Moreland,	Wellin,
Farrell,	Nason,	West,
Filcher,	Nelson,	Wickes,
Freeman,	Neunaber,	White,
Freud,	Noel,	Wilson, of Tehama,
Garvey,	O'Sullivan,	Wyatt,
Gorman,	Porter,	Mr. President—95.
Grace,	Pulliam,	

FOR SCHOOL OFFICERS.

MR. STEELE. Mr. President: I send up a new section to be added to the article, for Mr. Blackmer.

THE SECRETARY read:

"SEC. —. Women having the requisite qualifications of age and citizenship, as prescribed in section one of this article, shall have the right to vote at all elections for school officers, and shall be eligible to any educational office within the State."

MR. STEELE. Mr. President: Mr. Blackmer is not here, and in his absence I have offered this section. I do not know as it will do any good, as this Convention seems to be determined to set down upon woman suffrage and to deny to woman the position she ought to hold. She is a natural teacher, and to-day more than half the teachers in the country are women. There is no good reason why women should not be eligible to any educational office in the State. In many States she does hold certain offices, and in many places she holds the office of postmistress. Wherever she has held such offices she has proved herself able and competent. I hope that the gentlemen of the Convention will put away their prejudices and do this justice to woman, and make her eligible to any educational office, and if the people see fit to elect her that they may have the privilege of doing so.

MR. BEERSTECHER. Mr. President: I am in favor of the amendment allowing women to hold school offices. In fact, sir, under the Codes to-day women can hold school offices. If the Codes are examined the anomaly will be found to exist that the laws allow women to hold school offices and does not allow her to vote for the office that she is qualified to hold. As has been stated by the gentleman who preceded me, if there is any office at all that woman is qualified to hold it is an educational office. Certainly she ought to have a right to say something in regard to the education of her children. I am in favor of the amendment. It is no innovation. It would merely place in the Constitution that which is in the statute to-day. It would merely be wiping out an absurdity which allows a woman to hold an office for which she is not qualified to vote.

MR. CAPLES. Mr. President: This is merely an entering wedge. This is an attempt to do indirectly what gentlemen have failed to do directly. This whole heresy turns upon the assumption that women are a class separate and distinct from men; that they have rights separate and distinct from men. It always proceeds upon the assumption that God Almighty has not imposed upon women the duty of maternity. Now, if we can repeal the laws of God Almighty, and say that women shall no longer perform that great function, why then we may adopt these provisions. I deny that we can do it. This is simply an entering wedge to get at what is simply a stultification of the common sense of the history, of the logic, and the human experience of six thousand years. Why is it that to-day all at once women are separate and distinct from men? Why is it that they are absolved from the obligations that God and Nature's God has imposed upon them? They say it involves the tyranny of the husband. Is it true? Is there any tyranny? Is it not a fact, that the women of to-day are infinitely and incomparably above what they have ever been in any age of the world? No man can deny it. They occupy a sphere infinitely above that of men. But this modern philosophy says that women are only men in disguise; that they have the same rights, and we must abolish the distinctions that nature has made. I protest, in the name of morality, in the name of common sense, in the name of the experience of mankind for six thousand years against this foolish, this hostile attempt to abolish the distinctions that are founded in nature and cannot be repealed by human folly.

MR. LAINE. Mr. President: I do not desire to make a speech on woman suffrage, because I am opposed to it. I am opposed to it because the noblest of women, those who bear and nurture the children, would not vote. It would allow a certain class of women to go to the polls and vote, while the good mothers who raise the children and stay at home and take care of them, would not be represented. That is the worst of the proposition, because I believe as Napoleon said: "She is the greatest benefactor of the State who bears and raises the most children." [Applause.] We all know that our mothers are not going to the polls to vote, and that every budding old maid will be there.

MR. ROLFE. Mr. President: If the amendment could be modified so as to apply to the mothers of children, and the female guardians of children, I do not know but what I would support it; but in its present shape I will not support it. I say that if women are to vote for school officers it should be the women who have reared the children, and I would be willing to confine the right of suffrage in men, in an election for school officers, to the fathers and guardians of children. I would be willing to restrict even male suffrage to that extent. Now, I will call the attention of the Convention to what this amendment, in its present shape, will result in. It will result in the necessity for providing separate ballot boxes, because the State Superintendent has to be elected with other officers under our present law. County Superintendents have to be elected with other officers, and the women, of course, have no right to vote for these other officers, and under this amendment cannot have the right to vote for them. Now, if she puts her ballot in the general ballot box who is to know whether she votes for only educational officers or not? Another confusion—at present there is no registration of women for voting. No person shall vote unless that vote is registered. Now, the registry law makes no provision for registering women. The registry law can be changed, but our first election comes before there is any Legislature called to change the election laws. I simply call attention to the confusion that will result. This amendment shows that it was got up in haste, without mature consideration, and it will not accomplish the object. It will only result in confusion. I say I want no public prostitute to vote for educational officers to educate my children. I say

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confine it to the mothers of children and I will support it, otherwise I will not.

MR. WICKES. Mr. President: I believe in enlarging the sphere of women. Representative government is progressive, and is tending more and more to base itself upon intelligence. If man was intended to rule, not by brute force but by intelligence, woman ought to be taken in as a copartner with him in an intelligent representative government. Her activities could not have been designed to be swallowed up in marriage. She should be allowed to choose her own rulers, and to have more control of her own destiny. Every avenue of business should be open to her. She should be rendered more independent of man's mantle and home. None but the effeminate race of men who stand behind dry goods counters and peanut stands can object. Objectors have made but little advance on the ideas of the Mogul of India, Khan of Tartary, Sultan of Turkey, and Emperor of China, in reference to the status of women. Those who prate about woman's mission to bear children should be wished to have to bear one half of them. Grant woman the franchise, and under psychological laws she will bear a more self-reliant race, and a nobler type of manhood. Those who would deny to woman the ballot because she is not fitted for military service, may be cited to the heroic women who served our country in the Revolution, to Moll Pitcher, at Monmouth, who managed her slain husband's cannon, and received from Washington the commission of Colonel. They may be cited to the pioneer mothers of the West, who beat off predatory Indians; and to historic sieges, where female heroism was conspicuous. Is not the patron of our State an impersonation of female martial spirit? We should have signalized this day—St. Valentine's—by the passage of Mr. Ayer's amendment. It is a burning shame that we did not.

Messrs. Moreland, Hunter, Glascock, Doyle, and Pulliam demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. Steele, the ayes and noes were demanded by Messrs. Ayers, Barton, Brown, Grace, and Sweasey.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Huestis,	Stedman,
Barry,	Kelley,	Steele,
Barton,	Kenny,	Stevenson,
Beerstecher,	Keyes,	Sweasey,
Bell,	Kleine,	Turner,
Cowden,	Lewis,	Tuttle,
Cross,	McCoy,	Vacquerel,
Dudley, of Solano,	McFarland,	Van Voorhies,
Edgerton,	Mills,	Walker, of Tuolumne,
Freeman,	O'Donnell,	Wellin,
Freud,	O'Sullivan,	West,
Gorman,	Shafter,	Wickes,
Grace,	Smith, of 4th District,	Wilson, of Tehama,
Hilborn,	Soule,	Wyatt—42.

NOES.

Andrews,	Heiskell,	Nelson,
Barbour,	Herold,	Neunaber,
Biggs,	Herrington,	Noel,
Brown,	Hitchcock,	Ohleyer,
Burt,	Holmes,	Porter,
Caples,	Howard, of Los Angeles,	Pulliam,
Condon,	Howard, of Mariposa,	Reed,
Crouch,	Hunter,	Rhodes,
Davis,	Inman,	Ringgold,
Dean,	Jones,	Rolfe,
Dowling,	Joyce,	Schell,
Doyle,	Laine,	Schomp,
Dunlap,	Larkin,	Smith, of San Francisco,
Eagon,	Larue,	Swenson,
Estey,	Lavigne,	Swing,
Evey,	Lindow,	Thompson,
Farrell,	Martin, of Alameda,	Tinnin,
Filcher,	Martin, of Santa Cruz,	Tully,
Garvey,	McComas,	Van Dyke,
Glascock,	McConnell,	Waters,
Graves,	Moreland,	Webster,
Hager,	Morse,	White,
Hall,	Murphy,	Winans,
Harrison,	Nason,	Mr. President—73.
Harvey,		

Upon the engrossment of the article, Messrs. McComas, Larue, Laine, White, and Brown demanded the previous question, which was ordered by the Convention.

The article on suffrage was ordered engrossed for a second reading.

NOTICE.

MR. STEELE. I hereby give notice that I will, to-morrow, move to reconsider the vote by which the Convention refused to concur in the amendments to section one, offered by Mr. Ayers.

RESOLUTION—PAY.

MR. SHAFTER. Mr. President: I have a telegram calling me away this afternoon, and I desire to send up a resolution.

THE SECRETARY read:

Resolved, That the President of this Convention is hereby directed not to sign or issue any more scrip, or other evidence of claim, to any member of this Convention.

THE PRESIDENT. The resolution is not in order.

MR. SHAFTER. I appeal from the decision of the Chair. I am in possession of a piece of paper which contains a falsehood on its face. It goes on to say that for services rendered the State is indebted to me seventy dollars. Now, sir, your name is undersigned, as President, to that paper. I do not know but that I shall have my right to proceed against you personally for the amount stated there. [Laughter.]

MR. LARKIN. I move that the resolution apply to the gentleman from Marin.

MR. SHAFTER. I have the floor. The statute of the State declares that we shall not receive any pay after one hundred days, and here is a paper which states that the State is indebted to me seventy dollars for the time which the statute declares I shall have no money for. It is a false statement on the face of it. It is against good morals and against public decency. It is an evidence of debt, and the law says there is no such debt existing. For one I protest against the issuance of paper of that character. It is putting out false pretenses.

MR. EDGERTON. Have you not received all the scrip that has been issued prior to this time?

MR. SHAFTER. Undoubtedly; and I am ready to return it. We all know that it is contrary to the statute which calls us here.

MR. GRACE. I move that the resolution be laid on the table.

MR. BEERSTECHER. Under the table.

MR. CAPLES. Mr. President: The modesty of the gentleman from Marin overwhelms me. He has been here about half the time during the sitting of this Convention. He is a rich man.

MR. CAMPBELL. I believe the motion to lay on the table was seconded.

MR. CAPLES. The gentleman from Marin is a rich man; he has been here about half the time, perhaps less; he has been receiving his pay, I presume. Now, all at once it dawns upon him that it is immoral for members of this Convention to receive any pay for services that they have rendered at a sacrifice to themselves. Because I assume that gentlemen on this floor who, unlike the gentleman from Marin, have devoted their whole time, in a self-sacrificing spirit of patriotism to the public good, have sacrificed something. The gentleman informs us that he proposes to leave this Convention. He has been leaving all the time. He has been gone nearly the whole time, and he is going to leave this afternoon again, and therefore he hands in this resolution. Mr. President, I am simply overwhelmed by the gentleman's modesty.

MR. GRACE. I now renew my motion to lay the resolution on the table. I am also willing that the gentleman shall have leave of absence.

MR. ROLFE. I rise to a point of order. The resolution has been decided out of order, and there has been no appeal taken.

THE PRESIDENT. The motion is now to lay the resolution on the table, which the Chair will entertain.

The ayes and noes were demanded by Messrs. Shafter, Murphy, Hager, Burt, and Filcher.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Hall,	Porter,
Ayers,	Harrison,	Reed,
Barbour,	Harvey,	Rhodes,
Barry,	Heiskell,	Rolfe,
Barton,	Herold,	Schell,
Beerstecher,	Herrington,	Shurtleff,
Bell,	Holmes,	Smith, of 4th District,
Boucher,	Howard, of Los Angeles,	Smith, of San Francisco,
Brown,	Howard, of Mariposa,	Soule,
Burt,	Huestis,	Stedman,
Caples,	Hunter,	Steele,
Condon,	Inman,	Stevenson,
Cross,	Jones,	Sweasey,
Crouch,	Joyce,	Swenson,
Davis,	Kenny,	Thompson,
Dean,	Kleine,	Tinnin,
Doyle,	Laine,	Tully,
Dudley, of Solano,	Larkin,	Tuttle,
Dunlap,	Larue,	Van Dyke,
Eagon,	Lindow,	Van Voorhies,
Edgerton,	Martin, of Santa Cruz,	Walker, of Tuolumne,
Estey,	McComas,	Waters,
Evey,	McCoy,	Webster,
Farrell,	McNutt,	Weller,
Filcher,	Moffat,	Wellin,
Freeman,	Moreland,	West,
Freud,	Morse,	White,
Garvey,	Nason,	Wilson, of Tehama,
Glascock,	Nelson,	Winans,
Gorman,	O'Donnell,	Wyatt,
Grace,	O'Sullivan,	Mr. President—93.

NOES.

Biggs,	Keyes,	Ohleyer,
Boggs,	Lavigne,	Pulliam,
Campbell,	Lewis,	Ringgold,
Charles,	Mansfield,	Schomp,
Cowden,	Martin, of Alameda,	Shafter,
Graves,	McConnell,	Townsend,
Hager,	Mills,	Turner,
Hilborn,	Murphy,	Vacquerel—25.
Kelley,		

MR. SCHELL. I move we now take a recess until two o'clock.

WATER AND WATER RIGHTS.

THE PRESIDENT. The next business in order is the report of the Committee of the Whole on the article on water and water rights. The Secretary will read the amendments.

THE SECRETARY read all the amendments of the Committee of the Whole, and then the amendment to section one, as follows:

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"SEC. 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner to be prescribed by law."

MR. BARBOUR. Mr. President: I offer an amendment to section one as amended in Committee of the Whole.

THE SECRETARY read:

"Add to the end of section one: 'Provided the rates of compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any county, city and county, or city or town, or the inhabitants thereof, shall be fixed annually by the Board of Supervisors, or city and county, or city and town Council, or other governing body of such county, or city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water rates, when necessary, within such time, shall be subject to peremptory process, to compel action at the suit of any party interested, and shall be liable to such further process and penalties as the Legislature may prescribe. Any person, company, or corporation, collecting water rates in any county, city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water-works of such person, company, or corporation, to the county or city, city and county, or city or town where the same are collected, for the public use.'"

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I have presented this amendment at the request of parties who have made this subject their study, and also because my own judgment approves it, and because of the universal desire, so far as an expression has been had upon the subject, of the people I represent, that this sort of action should be taken by this Convention. These provisos with regard to the power of the State to control the use and regulate the sales of these franchises, and things which are clothed with a public use, which gives the authority of the public control, are all within the scope of the Granger and Elevator cases decided by the Supreme Court of the United States. As I understand it now, the provision and the amendment will contain two methods of regulation. One where water is furnished in ditches, say, for instance, for the use of a mining community, or for the use of an agricultural community, under regulation by law; that is to say, by laws enacted by the Legislature, or possibly by the delegation of the authority to some local body. The other is for the regulation of the subject where it condemns the supply of water for domestic use of the inhabitants of a city, or town, or some other incorporated political subdivision of the State, which has a body always able to exercise this control. The necessity for it in the case of San Francisco, and its supply of water is demonstrated by the fact that the Water Incorporation Act which was passed in eighteen hundred and fifty-eight, the General Incorporation Act, authorized water companies furnishing water for domestic and family uses to the inhabitants of these cities and towns, contained among other things a proviso that the rates to be charged for water should be determined by a Board of Commissioners to be selected in this manner: Two by the city, or city and county, two by the water company, and in case they could not agree they should choose a fifth. In case they could not agree upon a person for the fifth member, then the Sheriff of the county should appoint such person. Now, that proviso is extremely defective, and has always worked defective, especially in the case of the city of San Francisco. The great difficulty has been non-action; and it makes no difference what complaints come up from the citizens of that city in reference to oppressive and extortionate rates there is no power any where to compel the action, which was contemplated in the general Act for the incorporation of water companies. Something like eighteen or nineteen years have elapsed, and no rates have been established in that city at all except the rates that were established by the companies themselves. A decision of the Supreme Court was made by which it appeared that no rates could be collected unless they had been established in accordance with this provision of the law, and a Board of Commissioners was established under the law for the purpose of fixing rates. The rates they made instead of being a reduction were absolutely an increase. It is true the company voluntarily threw off ten per cent. from all bills, but if they should collect the full rates, as established by the Commissioners, it would almost double the rate actually collected. There are plenty of cases where favored individuals pay only nominal rates, while poor householders pay more than they do for bread. This provision is aimed at this sort of abuse and oppression. It requires the Board of Supervisors elected by the people themselves to act, and gives peremptory process to compel them to act, not to shuffle the responsibility off upon any Commissioners. Now, if the people cannot get reasonable rates by means of their own officers it is their own fault, and their own misfortune. They always have the opportunity of turning them out and placing others in power. It is but right and proper that we should have held in the Constitution that power of regulation.

Now, there is is another question which may arise in regard to this matter. In the legislative department we have already provided that the Legislature may establish the rates of charges to be collected by water companies and telegraph companies, and it may be claimed that there is a conflict. But that may be easily adjusted either by the Committee on Revision and Adjustment, or when we reach the article on second reading. I maintain that whatever may be done with regard to the use of any other franchise, or the control of any other business, that upon the question of the regulation of water, there never ought to be an opportunity or a possibility for a monopoly of any kind. It is absolutely indispensable to human existence, and no people should be placed beyond the power to control and regulate the rates. And no monopoly ought to be permitted to run along and arbitrarily fix the rates for this great necessary of life independent of any control.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

STATIONERY ACCOUNT.

THE PRESIDENT. I have here a communication from the Secretary of State which the Secretary will read.

THE SECRETARY read:

STATE OF CALIFORNIA, DEPARTMENT OF STATE,
SACRAMENTO, February 14th, 1879.

To the Honorable the President and Members of the Constitutional Convention:

In compliance with a resolution this day adopted by the Convention, I have the honor to transmit the accompanying "statement" of the amount of "stationery" furnished by me to "each" member of the Convention, from the commencement of the session (September twenty-eighth, eighteen hundred and seventy-eight), up to and including the thirteenth day of February, eighteen hundred and seventy-nine.

Very respectfully,

THOMAS BECK, Secretary of State.

A statement of the amount of stationery drawn by each member of the Constitutional Convention from the office of the Secretary of State, from the commencement of the session up to and including the thirteenth day of February, A. D. eighteen hundred and seventy-nine.

Andrews, A. R.	$6 77
Ayers, James J.	10 98
Barbour, Clitus,	7 92
Barnes, Wm. H. L.	9 31
Barry, Edward	8 47
Barton, James N.	9 45
Beerstecher, Chas. J.	20 16
Belcher, Isaac S.	8 10
Bell, Peter	16 06
Berry, J.	4 05
Biggs, Marion	6 85
Blackmer, Eli T.	10 00
Boggs, H. C.	5 38
Boucher, Josiah	16 61
Brown, Joseph C.	9 09
Burt, Samuel B.	9 72
Campbell, A., Jr.	5 19
Caples, James	7 71
Casserly, Eugene	9 95
Chapman, Augustus H	10 42
Charles, J. M.	5 38
Condon, John D.	11 11
Cowden, D. H.	8 07
Cross, C. W.	14 95
Crouch, Robert	4 84
Davis, Hamlet	5 30
Dean, J. E.	10 34
Dowling, Patrick T.	16 28
Doyle, Luke	12 24
Dudley, James M.	9 99
Dudley, W. L.	11 55
Dunlap, Presley	7 98
Eagon, John A.	10 95
Edgerton, Henry	13 26
Estee, Morris M.	16 63
Estey, Thomas H.	7 70
Evey, Edward	11 69
Farrell, Simon J.	12 94
Fawcett, Eugene	7 10
Filcher, J. A.	16 76
Finney, Chas. G.	13 40
Freeman, Abraham C.	5 60
Freud, Jacob R.	9 93
Garvey, J. B.	9 68
Glascock, B. B	8 73
Gorman, Joseph C.	8 88
Grace, Wm. P.	16 68
Graves, Wm. J.	12 65
Gregg, V. A.	18 33
Hager, John S.	8 71
Hale, James E.	20 22
Hall, J. B.	5 02
Harrison, Thomas	15 47
Harvey, Joel A.	9 43
Heiskell, Tyler D.	7 16
Herold, Conrad	6 60
Herrington, Dennis W.	10 27
Hilborn, S. G.	5 13
Hitchcock, John R. W.	15 44
Hoge, Joseph P.	5 58
Holmes, Samuel A.	9 16
Howard, Volney E.	9 76
Howard, William J.	13 33
Huestis, W. F.	13 40
Hughey, William P.	9 47
Hunter, G. W.	10 86
Inman, Daniel	6 67
Johnson, G. A.	7 21
Jones, L. F.	9 59
Joyce, Peter J.	15 69
Kelley, John M.	9 16
Kenny, Bernard F.	9 85
Kenny, John J.	11 08
Keyes, James H.	8 44
Kleine, Charles R.	8 97
Laine, Thomas H	5 22
Lampson, R. M.	12 74
Larkin, Henry	8 61
Amount carried forward	$801 35
Amount brought forward	$801 35
Larue, Hugh M.	10 92
Lavigne, Raymond	18 34
Lewis, David	10 93
Lindow, John F.	21 44
Mansfield, John	10 50
Martin, Edward	15 54
Martin, J. West	3 70
McCallum, John G.	12 84
McComas, Rush	9 27
McConnell, Thomas	10 62
McCoy, John	9 06
McFarland, Thomas B.	7 11
McNutt, John F.	8 97
Miller, John F.	6 40
Mills, Hiram	10 14
Moffat, William S.	2 72
Moreland, W. W.	13 16
Morse, Lucius D.	7 12
Murphy, James E.	4 87
Nason, Edmund	11 84
Nelson, Thorwald	10 54
Neunaber, Henry	9 06
Noel, Alonzo E.	12 36
O'Donnell, Charles C.	13 37
Ohleyer, George	10 34
O'Sullivan, James	16 24
Overton, A. P.	8 91
Porter, J. M.	4 77
Prouty, William H.	10 83
Pulliam, Mark R. C.	7 86
Reddy, Patrick	8 55
Reed, Charles F.	15 72
Reynolds, James S.	13 22
Rhodes, John M.	3 77
Ringgold, Charles S.	13 93
Rolfe, Horace C.	13 40
Schell, George W.	10 10
Schomp, Justus	15 39
Shafter, James McM.	13 49
Shoemaker, Rufus	7 86
Shurtleff, Benjamin	7 80
Smith, E. O.	10 27
Smith, George V.	24 02
Smith, Henry W.	15 35
Soule, Ezra P.	3 52
Stedman, John C.	16 39
Steele, George	16 36
Stevenson, David C.	8 78
Strong, J. M.	5 06
Stuart, C. V	8 86
Sweasey, W. J.	8 10
Swenson, Charles	11 86
Swing, Randolph S.	9 98
Terry, David S.	6 27
Thompson, S. B.	1 33
Tinnin, W. J.	6 70
Townsend, F. O.	7 38
Tully, P. B.	11 78
Turner, Henry K.	2 97
Tuttle, Daniel	11 85
Vacquerel, Alphonse	20 71
Van Dyke, Walter	9 72
Van Voorhies, William	11 77
Walker, Hugh	11 27
Walker, John	9 94
Waters, Byron	10 85
Webster, Jonathan V.	9 21
Weller, Joseph R.	9 20
Wellin, Patrick M.	18 56
West, John P.	12 33
Wickes, John T.	9 03
White, William F.	14 23
Wilson, H. C.	10 04
Wilson, Samuel M.	10 40
Winans, Joseph W.	15 57
Wyatt, N. G.	11 27
Total	$1,613 32

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MR. HAGER. I believe Mr. Beerstecher is entitled to the chromo, and I move it be awarded to him. [Laughter.]

MR. SMITH, of Fourth District. Mr. President: I think it no more than just that I should make a statement, because my amount there is higher than the facts justify. There were several articles brought to me which will be returned. They are no use to me. If my accounts are correctly stated they will be about on an average with other members.

MR. STEDMAN. I desire to offer a resolution in connection with this matter.

THE PRESIDENT. It is out of order.

WATER AND WATER RIGHTS.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment, offered by the gentleman from San Francisco, Mr. Barbour.

MR. BARBOUR. Mr. President: I ask leave to correct my amendment so as to make it apply to incorporated cities, cities and counties, and towns. Strike out the word "county," where it first occurs in line three, and the words "county or," in line five, and "county," where it first occurs in line fifteen, and the words "county and city," in line seventeen, so as to read:

"Provided, that the rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city or county, or city or town, or the inhabitants thereof, shall be fixed annually by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water-rates, when necessary, within such time, shall be subject to peremptory process, to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation collecting water-rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and water-works of such person, company, or corporation, to the city and county, or city or town, where the same are collected, for the public use."

MR. CAMPBELL. Mr. President: I desire to say that I hope this proposition will pass. It is one of the most useful which has been offered in this Convention, and will tend to commend this Constitution to a very large portion of the people of this State.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Barbour.

Adopted.

MR. WATERS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add, in line two, after the word 'distribution,' the words 'to the public.'"

SPEECH OF MR. WATERS.

MR. WATERS. Mr. President: My object in offering that amendment is this: The section declares that the use of all water is a public use. That is, that a man who has appropriated water for years to his own use, for private use alone, in which the public have no interest—that the use of that water is a public use. Now I do not think the people of this State are ready to adopt any such proposition as that. When an individual has had the use of water for twenty-five or thirty years, I do not think it becomes us now to declare that it is a public use. Men have taken water at their own expense, for their own farms alone. Has the public any interest in that? Is that a public use? I don't think it can be contended that it is. The Supreme Court has decided many times that it is private property. Now if it is a public use, what protection has any single individual in its use? I do not mean to say that water for cities may not be regulated by law. But there is a broad distinction. If we have no right to confiscate this property, let us not say we have. If we have a right, let us not do it. I think this amendment ought to be adopted.

SPEECH OF MR. HALE.

MR. HALE. Mr. President: I have no particular objection to this amendment. I think it will do no good. It is not necessary so far as the sale and distribution of water is concerned. Now this section reads as follows:

"SEC. 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State in the manner to be prescribed by law."

The proposed amendment is to add, after the word "distribution," the words "to the public." Now I will point out to my friend that he will defeat the object of this section as it is now formulated. It ought to be borne in mind that the two objects sought to be attained are these: First, to secure to the public the right of control in respect to waters appropriated and used for sale, rental, and distribution, to guard against oppressive and extortionate rates. It is also to guard against oppression arising from discriminating rates. That is one side of the question.

MR. WATERS. Does my amendment militate against that idea?

MR. HALE. Not that part. Now on the second point. In this country we have to depart from the general principles adopted elsewhere, on account of the arid climate, which makes it necessary to utilize all the waters. There is a necessity for a right of way, hence the necessity of invoking the power of eminent domain, by which we can take private property for the purpose of securing a right of way. Now suppose that fifty miners, or fifty farmers, club together and appropriate certain waters, and construct a line of ditch for the purpose of conveying the water, and their intention is not to sell the water but by a system of distribution agreeable to themselves divide it among themselves. Now the necessity for a right of way for the maintenance of such water appropriation is just as important to them as though it was for sale to the public. That is the reason why these words were left out when it was originally formulated. It is to enable parties to have the right of way on the one hand and to guard against extortion and oppression on the other.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: When these words, "for a public use," are injected into this section, it will be very difficult to determine what the section does mean. Now, sir, we, under our peculiar climate, and soil, and industries, are more dependent on the proper use of water than any other locality in the whole civilized world; and, sir, in some portions of this State water is being so taken up, and so appropriated, and so used, that God's humblest creatures, in many localities, have difficulty often in getting what is necessary to sustain life. Now, sir, it is only the use of water that any man can have. No law in any country has ever intended to grant to any man any interest in water, except the right to its use. Now, sir, there is no such thing in this State as regulating the price of private property. There never ought to be, in this or any other State, unless that regulation arises from the direct need. Now, in many places in this State, the water which God Almighty created for the use of all men, has been diverted from the natural channel, and run into some artificial channel, to enrich the few. Now, sir, I know some of these streams that have been diverted and run the entire length of the artificial channel, clear past the points where the water might be made useful, and there permitted to run to waste—water which God's creatures should have at some reasonable price.

Now, sir, some remedy for this state of things is demanded. Now, sir, if we find that what is needed is the knife, and I am to be one of the surgeons, I shall not hesitate to apply it. I understand full well the effect of the gentleman's amendment. It is this: While seeking to remedy the evil, the gentleman, by injecting a couple of words, will accomplish this result: That this State can only control the use of water when the water is sold for a public use, or rented for a public use, or distributed for a public use. But the Legislature, while it can regulate water for parks, for flushing sewers, for the purposes of the fire department, it cannot so much as lift a finger to regulate the sale of any water for the use of a private person. Now, you talk about land monopoly, and railroad monopoly, but they are as nothing compared with water monopolies. Nothing could be worse than water monopoly, unless it might be the monopoly of the air we breathe. One is as necessary to existence as the other.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I think the effect of this amendment will be to destroy the purpose of the section. Now, he proposes to add, after the word "distribution," the words, "to the public." Then if the water is not distributed to the public it is not a public use. If it is sold, or rented, or distributed to private individuals, then it is not a public use, and the Legislature can have no control over it. Therefore, I oppose the amendment. A man or a combination of men may take the water of a stream. It may be for their own uses and purposes entirely, for irrigation, or something of that kind. Then it is not a public use. Then the Legislature would have no right to interfere. They may sell it to their neighbors, and yet it is not a public use. Now, I am of the opinion that water, like air and light, should be free to us all. No man has a right, to the exclusion of others, to air or sun. Why? Because they are necessaries of life. Why should individuals or corporations control and monopolize the waters of the State any more than light and air, for one is as much necessary to life as the other. They are all necessaries of life, and ought to be entirely under legislative control. I recognize the right of private property, where men have built ditches. But I do not recognize the right of any man, or any set of men, to control the waters which may be necessary for any of the cities. Take the City of San Francisco. Suppose a few men get control of all the water within reach, and then say to the people, you cannot have this water unless you pay so much. Why should they go without it? They cannot get the necessaries of life because a few men control them beyond the power of the State. No, sir; it ought not to be. Nor ought they to be forced to go armed and break down the dam in order to get water. It ought not to be in the power of any man, or any combination of men, to control the necessaries of life. They ought to be subject to legislative control, and they must be. Not that the Legislature should do any injustice to private property. I would not advocate anything of that kind. But if any great necessity exists, the great power of the law should step in and rescue the citizens. I believe this amendment will take away that power.

SPEECH OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I cannot understand what the gentleman means when he says that water should be as free as the sunlight and the air, and then in the next breath says he recognizes the right of private property in water. There is no consistency in those two statements. Now, sir, I hold that a man who built a water ditch fifteen years ago, put his money and his labor on it, took the water that was free and carried it to another point where men wanted to use it for mining, is the owner of that ditch and has the right to run the water through it, as much as I am the owner of a piece of land and have a right to cultivate it. When gentlemen say water must be free, do they mean that it must run in its natural channels; that nobody must take it out? If that be the doctrine, how are you going to advance the interests of the State by allowing water to be used for mining and farming? How are you going to use it? Do you suppose men are going to build ditches and flumes over mountains and cañons to convey water to a place where it is needed if you are going to say when they get it there

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that the water is as free as the sunlight and the air, and that anybody can take it? Is there any sense in that proposition? Don't it strike direct at the rights of property? They take it from the man, because there are no streams left in this State that can be taken. There is scarcely a stream upon which there are not riparian owners. That was not the case twenty years ago. No man can take that water from them. The doctrine of this State is this: If I find a stream of water unappropriated, I can divert that water. If I choose, I may mine there, or I can divert it and take it thirty miles and open a mine, or sell it to men who want to open a mine. If there was any riparian owner there I could not do it. Take the County of Nevada, represented by Mr. Cross. The wealth of that county has been acquired in this very way. Men have diverted the waters of the South Yuba River at an expense of millions of money, carrying it to the mines. Do you mean to tell me that it is not private property, and that the State has a right to take it away whenever they choose? Suppose you let the water run in the natural channels, what good does it do anybody except the few who live along the banks?

MR. CROSS. Do you say there is any proposition here to take away that property?

MR. MCFARLAND. Under the guise of regulation, yes. The State may then say that the company shall not charge more than one cent an inch for water, which would amount to a confiscation of vested rights.

MR. CROSS. Do you deny the right of the State to regulate?

MR. MCFARLAND. Yes, sir; as I deny the right of the State to take money out of my purse. They are as much the owners as a man is of his house and lot in Sacramento. You have no more right to say what they shall charge than you have to say what the farmer shall charge for his wheat. The gentleman from Nevada says, we have no right to take away private property, and yet the Supreme Court of the United States says you have, in the Elevator cases.

MR. CROSS. That was where there was a public use.

MR. MCFARLAND. When a man erects a warehouse, and gets a good patronage, then the State can say what he shall charge.

MR. HOWARD, of Los Angeles. The gentleman undertakes to overrule the Supreme Court of the United States.

MR. MCFARLAND. You don't believe in every decision of that Court, do you?

MR. HOWARD. No, sir.

MR. MCFARLAND. The Supreme Court has overruled the doctrines you believe in, in relation to the powers of the General Government. The gentleman the other day repudiated the idea that this is a nation, and the Supreme Court has decided over and over again that it is a nation. I am in favor of the amendment, Mr. President, because it modifies the section to some extent. It is better than the original section. It is impossible to use water without there being a private ownership in it. You must come to the point that some man has a right to the use of the water, and when you come to that point, you must acknowledge and recognize private ownership. You cannot get out of it unless you say that water shall run in its natural channels.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. President: I had not proposed to say anything, neither do I propose to say much. But it does appear to me that this idea that water is free to everybody because God Almighty made it, is opposed to the spirit of our institutions, and would revolutionize the country. Now, it is evident when men commence to dig ditches in this country in order to advance the country, and make improvements, they are the owners of those ditches, and of the waters which they appropriate. That is what they calculated upon, otherwise they would never have made the outlay. Now, when you come to examine the decisions of the Supreme Court, you will find that they have decided that water when taken from streams in pipes or ditches, is as much property as anything else. Case after case may be brought forward to show the correctness of the proposition. It is contrary to law; it is contrary to justice. These men would never have invested their money in the way they have, had they thought there would ever have been such a state of the public mind as to cause the adoption of any such pernicious principle as that advocated here. We know that under the laws of this State, which are in accord with the laws of the United States, when a man diverted the water from a stream where there were no riparian rights, and used that water a certain length of time, he became the owner of it. He used it, and the Courts did not require of him to turn some of it back into the same stream. Neither could the man who afterwards settled along that stream below appropriate the water. It could not be done. And now, contrary to law, contrary to usage, contrary to experience, we are talking about the use of water; that there is nothing in it but a use, and therefore no property. Give every man the right to take the water from those who have taken it out. This amendment is some improvement upon this monstrous provision, and therefore I shall support it. But it does not reach the main question. Neither do I agree with the gentleman from San Francisco, Judge Hager——

MR. CROSS. I would like to ask you a question.

MR. BROWN. No, sir; my time is short.

MR. CROSS. I thought perhaps I might get some light from you.

MR. BROWN. I didn't get any from you. [Laughter.] This idea that there can be no property right in water is wrong. It is contrary to what has been established as the correct doctrine by the Courts of the land. These wild notions are all wrong. They are contrary to justice and law, and right. We had better be guided by the decisions of the Courts of the land, and by experience, and by a sense of justice than to launch out upon an unknown sea.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I thought this question had been thoroughly and amply discussed in Committee of the Whole. But it does seem to me that some gentlemen never understand or comprehend the situation, or else they are willfully blind, one of the two. The idea that water running through my place over any public land of the United States, may be appropriated, even according to the statute, and thereby become private property, according to the doctrine of the gentleman from Sacramento, is one of the most senseless propositions that was ever introduced to an intelligent mind. You talk about confiscation. You talk about robbery. There is no government upon the face of God Almighty's earth that ever permitted robbery upon such a broad scheme as this proposes to do. Consider that this water drops upon the public land, and then flows through my land. Then the gentleman from Sacramento comes along and says, I appropriate this water for this or that purpose. If I enter any objection, he says, he has acquired private property. So does any common thief acquire private property, but he does it in violation of law and justice. Is it possible that a man can take property in this way, and yet not consider that it is founded upon a public use. If that be so, where is your right to confiscate my private property, and make it your private property?

MR. MCFARLAND. Did I not state explicitly that if you had any right upon that stream I could not take the water.

MR. HERRINGTON. You take it out above me.

MR. MCFARLAND. I could not take it a thousand miles above you, strictly speaking.

MR. HERRINGTON. You do take it. I understand the law. You have taken it right there on the Yuba River and never asked the privilege of those below.

MR. TULLY. I rise to point of order.

THE PRESIDENT. The gentleman is not in his seat. [Laughter.]

MR. HERRINGTON. When they made these appropriations of the headwaters of the San Joaquin, who ever asked permission of the farmers along the banks of that stream? No man. And when the miners wanted water, which of them ever asked the farmers along the banks of the Sacramento and its branches. Never a solitary instance. It has been appropriated by a simple notice that it was appropriated for a certain purpose. No one has any right to take these waters unless it can be shown that it is taken for a public use, and for the benefit of the public. Anything else is thieving and robbery; nothing short of it. What right has any man to take the water which runs through my place, and then declare that it is private property. What right has he to do it. God put it there; it was mine, and you had no right to take it. That is a most stupid proposition upon which the gentlemen stand. That is the absurd position in which they have placed this Convention, pretending that we know nothing about these great questions. Oh! who will come to the feet of Gamalia, and seek after the divine knowledge which the gentleman from Sacramento has been able to pour forth.

Now, it has been established from time immemorial, that even the sovereign itself does not own any private right in water, no right that he can deprive the citizen of. How can these gentlemen acquire what the sovereign never owned. You can only take it for a public use, for the benefit of the public, and to do this you must condemn it, and to condemn it, you must set up that it is for a public use. You can get it in no other way. What different right do you acquire by sticking up a notice, and declaring that you take it. It is all nonsense.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: It seems to me we have got a tempest in a teapot here. We have been lectured here about the gifts of God Almighty, and we hear it stated that there can be no private ownership in the necessaries of life. I understand that all the gifts of God are subject to private ownership. It useless to talk about anything else. All my friend from San Bernardino is trying to do, is to guard against individual wrong, and make this matter plain, so that individuals cannot come into the door yards of some of these parties down there, where they have appropriated the water for distribution among their own farms—so that they could not come there and take it away. That is all there is about it. Gentlemen do not seem to comprehend what is meant by the words, "to the public." It does not mean to the organized public, or to some municipal corporation. When I write a piece to the public, and publish it, I do it to the public—to everybody. When I have appropriated water for distribution upon my farm, I have not appropriated it for sale; I have not appropriated it for rental; I have not appropriated it for distribution. This amendment says simply when it is for distribution to the public—that is, to persons who may buy it. That is all there is about it. This whole discussion is entirely too broad. The amendment is simply to make the matter more clear. I am satisfied the amendment ought to prevail, that it will do no harm. When appropriation is spoken of, it means an appropriation made according to law.

MR. WICKES. Mr. President: There seems to be a good deal of misunderstanding here. I have heard of the Legislature of a "thousand drinks," but I think this is a Convention with water on the brain. I don't wonder at it, for Sacramento is filled with water. As a city, it does not need water. We see it everywhere. It is of the consistency of coffee; you have to drink it. Now, we must remember that the resources of both the mining and farming regions have been greatly developed by the means of water. It has been the chief means in the mines. I believe in encouraging these things, and allowing the men who have put their money in, a fair profit. We ought to be very careful in the regulation of these properties, so as not to cripple them.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Coming from the section where I do, I am entitled to say something on this subject. Now, it seems to me that this matter involved here is the very matter that has been settled by this Convention in Committee of the Whole—the question of whether there ought to be the right to ownership of water. Now, if an individ-

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ual takes up a lake, he deprives the farmers of the use of the water, and prevents the Legislature from regulating the water right, so as to avail the whole country. I am surprised at the gentleman from Tulare, who comes from a county where there is such a limited supply of water, and where the great body of the land is worthless without water. He wants to prevent the Legislature from so regulating the water right as to give to the settlers the advantage of all the water there is there. If this amendment is passed it will give the individual the right to use what he wants, and waste the balance of it, and prevent the Legislature from regulating that water.

MR. WATERS. Will the gentleman be kind enough to point out anything that will allow a man to waste water.

MR. SMITH. So long as it is a private use, and a private ownership, he can use it and control it as he pleases. So long as he uses the water for the public, that is a public use. But the ownership of the water is left in the individual, and he can control it, and the Legislature has no right to regulate it so as to give the advantage of it to the public. Now our object is to have the State control the water, so as to regulate its use, so as to give the benefits to the public, so far as that water will go, so as to prevent an individual owning water and using it without regard to the public benefit. This matter has been well settled by the laws of this State. The laws of this State have never yet recognized an absolute ownership in water; only a certain species of ownership. The Supreme Court has never decided emphatically that there is. The decisions all go to the effect that there is no ownership in the water itself, but only in its use. The State should have the right to condemn private rights, so that the water may be made available to the greatest extent that the water will go.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Bernardino, Mr. Waters.

The ayes and noes were demanded by Messrs. Brown, Condon, Tully, Swing, and Waters.

The roll was called, and the amendment rejected by the following vote:

AYES.

Brown,	Larue,	Rhodes,
Caples,	Lewis,	Rolfe,
Cowden,	Mansfield,	Shoemaker,
Dean,	Martin, of Alameda,	Shurtleff,
Dunlap,	McFarland,	Smith, of Santa Clara,
Eagon,	McNutt,	Stevenson,
Edgerton,	Mills,	Swing,
Estey,	Moffat,	Thompson,
Garvey,	Morse,	Tinnin,
Glascock,	Murphy,	Tully,
Hall,	Noel,	Walker, of Tuolumne,
Howard, of Los Angeles,	Ohleyer,	Waters,
Hunter,	Porter,	Weller,
Jones,	Pulliam,	Wickes,
Kelley,	Reed,	Mr. President—46.
Laine,		

NOES.

Andrews,	Hager,	O'Donnell,
Ayers,	Hale,	O'Sullivan,
Barbour,	Harrison,	Reynolds,
Barry,	Harvey,	Ringgold,
Barton,	Herold,	Schomp,
Beerstecher,	Herrington,	Smith, of 4th District,
Bell,	Hilborn,	Smith, of San Francisco,
Boucher,	Hitchcock,	Soule,
Burt,	Holmes,	Stedman,
Campbell,	Howard, of Mariposa,	Steele,
Charles,	Huestis,	Sweasey,
Condon,	Hughey,	Swenson,
Cross,	Inman,	Townsend,
Crouch,	Joyce,	Turner,
Davis,	Kenny,	Tuttle,
Dowling,	Kleine,	Vacquerel,
Doyle,	Lavigne,	Van Voorhies,
Dudley, of Solano,	Lindow,	Webster,
Evey,	McComas,	Wellin,
Farrell,	McConnell,	West,
Filcher,	McCoy,	White,
Freud,	Nason,	Winans,
Gorman,	Neunaber,	Wyatt—70.
Grace,		

MR. HITCHCOCK. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by adding to section one, line four: 'provided, that the Legislature may, by general laws, authorize the taking of private property on just compensation made therefor, when necessary to the construction or maintenance of water ditches or canals for the drainage or reclamation of lands, and may on like conditions authorize the taking of private property when necessary to secure rights of way to or for drainage of mines.'"

REMARKS OF MR. HALE.

MR. HALE. Mr. President: I ask the Clerk to read that amendment again. I do not believe it is understood by the Convention.

THE SECRETARY read the amendment again.

MR. HALE. Mr. President: This amendment has been considered in connection with section one, and I wish to say that the purpose of it is, that it was feared by many gentlemen who were farming along the rivers, where levying and reclamation is necessary, that there was an absolute necessity for a provision of this kind. There are lands in this State which are the most valuable that can be found, when fully reclaimed, but which never can be reclaimed unless this power of eminent domain can be invoked. Government, by an express Act of Congress, gives the right of way across the public domain for the purpose of draining mines, or allows the State to give the right of way. There is some doubt about this matter, as to whether the necessary right is conferred by section one; hence this amendment has been framed in order to render it certain. I believe it will be sufficient for the purpose. I hope it may be adopted.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. President: I desire to concur in the remarks of the gentleman. This proposition carries with it justice and fairness in behalf of the low lands of this State. Without some such provision as this, we cannot possibly expect the reclamation of land. There is no steal in it that any one need be alarmed about. There is no chance for any corporation to get control of it; but it is to enable the farmers to reclaim their lands. I hope it will be adopted.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. President: This I look upon as only another mode of confiscation. Under this Government one man is just as good as another. One man's private rights are just as good as another's, though he may not be worth one hundredth part as much. I look upon this scheme as a direct infringement upon these private rights. They are to be taken upon making just compensation, but it says nothing about the public good. It is not confined to the public. It attempts to give the right of way across private property to a private individual, a miner, regardless of whether that mine is for the public use or not. Mines cannot be for the public use, any more than farms can. Government does not carry on the business of mining, though it does the business of coining. Now, I do not care if the amendment does say that just compensation shall be made. If I have property, it is my own business whether I dispose of that property or not, unless the State wants it for a public use. If the State needs the property for a public use, or if an individual needs it for a public use, then my property can be paid for and taken. But no man's property ought to be subject to be taken for private use upon any compensation whatever. I may have a horse; he may not be of use to me, though I believe the horse is dead, but I may have a mule, and he may be of no use to me. Another man might have a great deal of use for him, and he may come and offer me his full value; but neither the State, nor any power in the State has the right to say that I shall give him that property for ten times its value, unless I am willing to do it. Now, we authorize the owner of a mine, whether a corporation or an individual, to go across the private domain of another man to get that mine drained. Now, if there is any such law as that, it is contrary to the Constitution of this State, contrary to the Constitution of the United States. I have authorities here to show it. I may have a farm, and another man may have a mine right alongside of it, and for the purpose of getting to his mine, it may be necessary to ruin and destroy my house. Still my dwelling may be worth twice as much as his mine; he may be willing to pay me all it is worth; still, I contend I have a right to say that he shall not have it. There is no justice in it. You will find a case in Chetney's New York Reports, Beatman v. The Saratoga Railroad Company. In that case it is decided that such a thing as I have described is contrary to the Constitution of the United States. If we put it in this Constitution, it will be in contravention of the Constitution of the United States. "The right of eminent domain does not imply the right of the sovereign power to take the property of one citizen and transfer it to another, even for full compensation, where the public interest will be in no way promoted by such transfer." That is what is decided in that case, and this amendment will be in violation of it. It goes on to show that such a proceeding would be in violation of the contract by which the Government of the United States granted this land to the individual, and therefore repugnant to the Constitution of the United States, where it says that no State shall pass laws impairing the obligation of a contract.

MR. HITCHCOCK. In reclaiming fifty thousand acres, is not that for a public use?

MR. ROLFE. If it is a public use there is no necessity for this provision; you can always take property for a public use, and there is no necessity for putting anything more in the Constitution. Nobody denies that individual property can be taken for a public use, whether for reclamation, or what not. This is simply an attempt to infringe upon the sacred right of private ownership where no public interest is involved, for if there is any public interest, this is wholly unnecessary.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: The gentleman referred to a portion of a decision to sustain his position; if he had read the whole of it, he would have found a different state of things. He stopped short of that portion which defines water rights. Now, the object of this provision is this: It is well known that there are large tracts of land, valuable agricultural land, in this State, that need draining, but are not drained for the reason that the parties cannot get the right of way; this is also so in the business of mining. The man who owns the drainage will charge an enormous price for the right to run a tunnel through. Now, if the gentleman had read further in the same decision, he would have found this: "But if the public interest can be in any way promoted by the taking of private property, it must rest with the wisdom of the Legislature to determine whether the benefit to the public, by the use, is of sufficient importance to authorize the exercise of the right of eminent domain."

Mr. ROLFE. It says the Legislature may do that. Then what is the use of a constitutional provision?

MR. CROSS. We are a legislative body. I don't know whether it is unnecessary or not. When the Legislature comes to do it, I do not want

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them to find any snag in the Constitution which will prevent their doing it.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Stedman, Schomp, Davis, and Lewis.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Joaquin, Mr. Hitchcock.

The ayes and noes were demanded by Messrs. Schomp, Lewis, Hitchcock, and McConnell.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Hall,	O'Donnell,
Barbour,	Harrison,	Ohleyer,
Barry,	Herold,	Pulliam,
Barton,	Herrington,	Ringgold,
Bell,	Hitchcock,	Schomp,
Boucher,	Joyce,	Smith, of 4th District,
Brown,	Kelley,	Soule,
Burt,	Kenny,	Stedman,
Campbell,	Kleine,	Swenson,
Condon,	Larkin,	Tinnin,
Cowden,	Lavigne,	Townsend,
Cross,	Lewis,	Turner,
Davis,	Lindow,	Vacquerel,
Doyle,	McConnell,	Weller,
Dudley, of San Joaquin,	McCoy,	Wellin,
Farrell,	McNutt,	Wickes,
Filcher,	Moffat,	White,
Gorman,	Morse,	Winans,
Hale,	Neunaber,	Wyatt—57.

NOES.

Ayers,	Huestis,	Rhodes,
Beerstecher,	Hughey,	Rolfe,
Caples,	Hunter,	Schell,
Charles,	Inman,	Shoemaker,
Crouch,	Jones,	Shurtleff,
Dean,	Laine,	Smith, of Santa Clara,
Dowling,	Larue,	Smith, of San Francisco,
Dunlap,	Mansfield,	Steele,
Edgerton,	Martin of Alameda,	Stevenson,
Estey,	Martin, of Santa Cruz,	Sweasey,
Evey,	McComas,	Swing,
Freud,	McFarland,	Thompson,
Garvey,	Mills,	Tully,
Glascock,	Moreland,	Tuttle,
Grace,	Murphy,	Walker, of Tuolumne,
Harvey,	Nason,	Waters,
Heiskell,	Noel,	Webster,
Hilborn,	O'Sullivan,	West,
Holmes,	Porter,	Mr. President—59.
Howard, of Los Angeles,	Reed,	

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole as amended.

The amendment as amended was concurred in.

THE PRESIDENT. The question is on concurring with the Committee of the Whole, in striking out section two. The Secretary will read.

THE SECRETARY read:

"SEC. 2. The unappropriated waters of the lakes and rivers of this State are declared to be public property, and may be appropriated by individuals, associations, or corporations, subject to such conditions and restrictions as the Legislature may impose."

The recommendation of the Committee of the Whole was concurred in.

THE PRESIDENT. The question is on concurring with the Committee of the Whole, in striking out section three. The Secretary will read.

THE SECRETARY read:

"SEC. 3. The Legislature shall enact laws permitting the appropriators of water and the owners or occupants of land to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels, for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the land of others."

The recommendation of the Committee of the Whole was concurred in.

THE PRESIDENT. The question is upon concurring with the Committee of the Whole in adopting a new section. The Secretary will read.

THE SECRETARY read:

"SEC. —. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law."

Concurred in.

MR. DUDLEY, of Solano. Mr. President: I offer a new section.

THE SECRETARY read:

"The Legislature may pass laws permitting the owners or occupants of land to construct drains or ditches for agricultural or sanitary purposes across the lands of others."

THE PRESIDENT. Not in order. The same thing has been voted down twice.

MR. WATERS. Mr. President: I offer a new section.

THE SECRETARY read:

"SEC. —. Rights to the use of water heretofore acquired by appropriation and use of the same according to law, which have vested and accrued, are private property, except in so far as the use may be for a purpose in which the public has an interest."

MR. WATERS. Mr. President: I contend that this amendment is strictly in line with the decisions in the Elevator cases. That is a mere declaration of what I consider is the law. Anything else we can say is nugatory. I do not desire to enter into a discussion of the question at all, but it seems to me a plain proposition.

MR. FILCHER. Mr. President: I cannot see any particular objection to the amendment, and yet it seems unnecessary, as my reading of section one seems to cover the point. Unless used "for sale, rental, or distribution" it cannot be affected by the Legislature. But where the use becomes public, then it is subject to this provision. I cannot see any necessity for the amendment.

MR. WATERS. If two private individuals appropriate water for distribution between themselves?

MR. FILCHER. Certainly.

MR. WATERS. Then this section don't cover them.

MR. FILCHER. I do not see why not.

The amendment was rejected.

MR. SMITH, of San Francisco. Mr. President: I offer a new section.

THE SECRETARY read:

"SEC. —. Water for the use of any city or county, or city and county, or town, in this State, or the inhabitants thereof, can only be appropriated by the lawfully constituted authorities of such city or county, or city and county, or town. Any appropriation of water heretofore made by any person, association, or corporation, for the purpose of supplying any city or county, or city and county, or town, or the inhabitants thereof, not actually evidenced and carried into operation by the construction of waterworks, and the furnishing of water at the time of the adoption of this Constitution, shall be void."

REMARKS OF MR. SMITH.

MR. SMITH, of San Francisco. Mr. President: I am in favor of this amendment because I think it is about time this wrong upon the people of the State should be stopped. Now, sir, this is one of the most serious questions that has ever presented itself to the people of California. It is an evil that has been growing up for years. The Spring Valley Water Company controls the city in its grasp. This says that these waters can only be appropriated by the authorities of the cities, counties, and towns, for the use of the people. It does not interfere with parties who have appropriated waters, or prevent them from carrying their works into effect. The only means San Francisco has of relieving herself from this curse is to construct waterworks of her own.

MR. FILCHER. We are called upon to vote upon this proposition and I wish to say that the subject is fully covered by section six of the article on corporations. I shall therefore vote against this amendment.

MR. BARBOUR. Mr. President: My idea is that it is very doubtful whether it is or not. Take a case like Lake Tahoe. Somebody stuck a notice on it declaring that they were going to bring the water to San Francisco. That is a private appropriation. Now, it is necessary to prevent in future any such locations of these waters, if there be any such left in the State.

MR. CAPLES. Mr. President: I am opposed to the adoption of this amendment. It is the assumption of a power to declare a forfeiture in certain cases. Now, it is not competent for this Convention to take upon itself judicial functions. That is for the Courts to say, and not for us. The object may be a good one, but if these rights exist, we cannot declare them forfeited.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I do not believe that the gentleman who has offered this amendment understands the scope it will have. I will give an example. Suppose the farmers of Los Angeles County want to appropriate the waters of some river for the purpose of irrigating their fields. If this amendment is adopted, it could not be done. They must go and get the Board of Supervisors to claim the water, and then furnish it to them. Nobody can appropriate water except the State, county, city, or town. I understand the object of this is to get some relief against Spring Valley, but I apprehend that the company would ask nothing better than this. They never would have any complaint. I should be glad to support a proposition to accomplish the object which this is intended to accomplish, but this will not do.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Smith.

The ayes and noes were demanded by Messrs. White, Farrell, O'Sullivan, Smith of San Francisco, and Beerstecher.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barbour,	Grace,	Smith, of San Francisco,
Barton,	Harrison,	Soule,
Beerstecher,	Joyce,	Stedman,
Bell,	Kenny,	Sweasey,
Condon,	Kleine,	Swenson,
Dowling,	Lavigne,	Thompson,
Doyle,	Lindow,	Tuttle,
Evey,	Neunaber,	Vacquerel,
Farrell,	O'Donnell,	Wellin,
Filcher,	O'Sullivan,	West,
Freud,	Ringgold,	White—35.
Gorman,	Smith, of 4th District,	

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NOES.

Andrews,	Holmes,	Pulliam,
Ayers,	Huestis,	Reed,
Barry,	Hunter,	Rhodes,
Boucher,	Inman,	Rolfe,
Brown,	Jones,	Schell,
Burt,	Kelley,	Shurtleff,
Campbell,	Laine,	Smith, of Santa Clara,
Caples,	Larue,	Steele,
Charles,	Lewis,	Stevenson,
Cowden,	Martin, of Santa Cruz,	Swing,
Cross,	McComas,	Tinnin,
Crouch,	McConnell,	Tully,
Davis,	McCoy,	Turner,
Dean,	McNutt,	Van Voorhies,
Dunlap,	Mills,	Walker, of Tuolumne,
Edgerton,	Moffat,	Waters,
Estey,	Moreland,	Webster,
Garvey,	Murphy,	Weller,
Glascock,	Nason,	Wickes,
Hager,	Noel,	Winans,
Hall,	Ohleyer,	Wyatt,
Heiskell,	Porter,	Mr. President—67.
Herrington,		

THE PRESIDENT. The question is: Shall this article be engrossed and read a second time?

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Dean, Larue, Laine, and Swing.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

The motion prevailed, and the article was ordered engrossed and read a second time.

NOTICES OF RECONSIDERATION.

MR. ANDREWS. Mr. President: I hereby give notice that, on to-morrow, I will move to reconsider the vote by which section —, added in the Committee of the Whole to the article on water and water rights, on motion of Mr. Herrington, was adopted.

MR. TINNIN. Mr. President: I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention ordered to engrossment the article on water and water rights.

MR. THOMPSON. Mr. President: I hereby give notice that I will, on to-morrow, February fifteenth, eighteen hundred and seventy-nine, move to reconsider the vote whereby the amendment of Mr. Hitchcock, to section one, was rejected. Also, I give notice that, on to-morrow, I will move to reconsider the vote by which the article on water and water rights was ordered engrossed and ordered read a second time.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole.

THE SECRETARY read the following proposed new section:

"SEC. 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State."

Concurred in.

THE PRESIDENT. The question is: Shall this article be ordered engrossed and read a second time?

So ordered.

HARBOR FRONTAGES, TIDE WATERS, ETC.

THE PRESIDENT. The Secretary will read the amendments of the Committee of the Whole to the report of the Committee on Harbor Frontages, Tide Waters, and Navigable Streams.

THE SECRETARY read the amendments, and then read section two, as follows:

"SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable, and that the people shall not be shut out from the same."

Adopted.

THE PRESIDENT. The Secretary will read section three.

THE SECRETARY read:

"SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; but sites for wharves, warehouses, or other necessary incidents to commerce, may, upon application to the Board of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years to such persons, partnerships, or corporations; provided, that nothing in this section shall apply to the tide lands of the Bay of San Francisco."

MR. BEERSTECHER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after the word 'commerce,' in line five, these words: 'excepting on the waters of the Bay of San Francisco, or within the limits of the City and County of San Francisco;' and strike out all after the word 'years,' in the eighth line, and insert the following: 'or less, under such regulations as may be prescribed by law.'"

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: The object of this amendment is to prevent hereafter any grant of these water frontages being made to private individuals for the purpose of speculation. I had thought that all the water frontages were owned by private individuals, but I find there are certain portions, such as China Basin, now in dispute between the city and certain parties; and this is to secure to the city whatever rights she may have in the premises. This absolutely reserves the right of the City of San Francisco beyond the power of any Board of Supervisors to lease them to private individuals. This amendment seems to me to be necessary to secure the rights of San Francisco.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I object to this amendment. I do not think it ought to pass in the shape in which it is in. It would give the Board of Supervisors the right to let out wharves for a period of twenty years. It would be an immense thing for somebody to get control of the wharfage privileges for twenty years from the Supervisors. If we except anything, we ought to except the whole Bay of San Francisco.

MR. BEERSTECHER. With the consent of the Convention, I will move to strike out all after the word "corporations," in line four. I will change my motion, and move to strike out——

THE PRESIDENT. The question is upon the motion to strike out all after the word "corporations."

Carried.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole as amended.

The amendment as amended was concurred in.

THE PRESIDENT. The question is: Shall this article be ordered engrossed and read a second time?

So ordered.

ADJOURNMENT.

MR. EDGERTON. Mr. President: I move that the Convention do now adjourn.

Carried.

And at five o'clock P. M., the Convention stood adjourned until to-morrow morning, at half-past nine o'clock.

ONE HUNDRED AND FORTY-FIRST DAY.

SACRAMENTO, Saturday, February 15th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	O'Sullivan,
Ayers,	Harvey,	Porter,
Barbour,	Heiskell,	Pulliam,
Barry,	Herold,	Reed,
Barton,	Herrington,	Reynolds,
Beerstecher,	Hilborn,	Rhodes,
Belcher,	Hitchcock,	Ringgold,
Bell,	Holmes,	Rolfe,
Boggs,	Howard, of Los Angeles,	Schell,
Boucher,	Howard, of Mariposa,	Schomp,
Brown,	Huestis,	Shurtleff,
Burt,	Hughey,	Smith, of Santa Clara,
Campbell,	Hunter,	Smith, of 4th District,
Caples,	Inman,	Smith, of San Francisco,
Chapman,	Jones,	Soule,
Charles,	Joyce,	Stedman,
Condon,	Kelley,	Steele,
Cowden,	Kenny,	Stevenson,
Cross,	Kleine,	Sweasey,
Crouch,	Laine,	Swenson,
Davis,	Larkin,	Thompson,
Dean,	Larue,	Tinnin,
Dowling,	Lavigne,	Townsend,
Doyle,	Lewis,	Tully,
Dudley, of Solano,	Mansfield,	Turner,
Dunlap,	Martin, of Alameda,	Tuttle,
Eagon,	Martin, of Santa Cruz,	Vacquerel,
Edgerton,	McComas,	Van Voorhies,
Estey,	McConnell,	Walker, of Tuolumne,
Evey,	McCoy,	Waters,
Farrell,	McNutt,	Webster,
Filcher,	Mills,	Weller,
Freeman,	Moffat,	Wellin,
Freud,	Moreland,	West,
Garvey,	Morse,	Wickes,
Glascock,	Murphy,	White,
Gorman,	Nason,	Winans,
Grace,	Neunaber,	Wyatt,
Hager,	Noel,	Mr. President.
Hall,	Ohleyer,	

ABSENT.

Barnes,	Blackmer,	Estee,
Berry,	Casserly,	Fawcett,
Biggs,	Dudley, of San Joaquin,	Finney,

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Graves,	McFarland,	Shoemaker,
Gregg,	Miller,	Stuart,
Hale,	Nelson,	Swing,
Johnson,	O'Donnell,	Terry,
Keyes,	Overton,	Van Dyke,
Lampson,	Prouty,	Walker, of Marin,
Lindow,	Reddy,	Wilson, of Tehama,
McCallum,	Shafter,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Lindow, Biggs, and Lampson.

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

RECONSIDERATION.

MR. TINNIN. Mr. President: I move to reconsider the vote by which the Convention on yesterday ordered to engrossment the article on water and water rights. I move to make the motion to reconsider the special order for Tuesday next at two o'clock P. M.

MR. LARKIN. Mr. President: I think it is very bad policy to postpone it that length of time. We can dispose of it, and submit it to the Committee on Revision.

MR. WATERS. The Revision Committee have nothing to do with it.

MR. LARKIN. I withdraw my objection to it.

MR. HAGER. For one of the Committee on Revision, I would like to state that the committee cannot act until all these propositions have passed their second reading, therefore there is no delay on the part of that committee.

MR. TINNIN. Mr. President: I would amend my resolution, that all notices of reconsideration on the subject of water and water rights go over until that time.

Mr. LAINE. I would like those who are in favor of this motion to state the object of it, so that we can vote intelligently upon this matter.

MR. TULLY. Mr. President: I move to lay the motion on the table.

The ayes and noes were demanded by Messrs. Tinnin, Brown, Hager, Pulliam, and Waters.

The roll was called, and the motion to lay on the table prevailed by the following vote:

AYES.

Ayers,	Herold,	Noel,
Barbour,	Herrington,	Porter,
Barton,	Hilborn,	Reynolds,
Beerstecher,	Holmes,	Rhodes,
Bell,	Hughey,	Ringgold,
Boucher,	Hunter,	Rolfe,
Brown,	Inman,	Smith, of 4th District,
Campbell,	Joyce,	Smith, of San Francisco,
Caples,	Kenny,	Soule,
Charles,	Kleine,	Stedman,
Condon,	Laine,	Swenson,
Doyle,	Larkin,	Townsend,
Dunlap,	Lavigne,	Tully,
Evey,	Martin, of Santa Cruz,	Tuttle,
Farrell,	McComas,	Vacquerel,
Filcher,	McConnell,	Wellin,
Freud,	Moffat,	West,
Garvey,	Morse,	White,
Gorman,	Nason,	Wyatt,
Hager,	Neunaber,	Mr. President—61.
Harrison,		

NOES.

Andrews,	Heiskell,	Reed,
Barry,	Hitchcock,	Schell,
Boggs,	Howard, of Mariposa,	Schomp,
Burt,	Huestis,	Shurtleff,
Chapman,	Jones,	Smith, of Santa Clara,
Cowden,	Kelley,	Steele,
Cross,	Larue,	Stevenson,
Crouch,	Lewis,	Sweasey,
Davis,	Mansfield,	Thompson,
Dean,	Martin, of Alameda,	Tinnin,
Dowling,	McCoy,	Turner,
Dudley, of Solano,	McNutt,	Van Voorhies,
Edgerton,	Mills,	Walker, of Tuolumne,
Estey,	Moreland,	Waters,
Glascock,	Ohleyer,	Weller,
Grace,	O'Sullivan,	Wickes,
Hall,	Pulliam,	Winans—52.
Harvey,		

RESOLUTION.

Resolved, That the usual recess be dispensed with for this day, and that the Convention adjourn at two o'clock P. M.

Adopted.

MR. TINNIN. Mr. President: I move to reconsider the vote by which the article on water and water rights was ordered engrossed.

THE PRESIDENT. That vote carried your motion to the table.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

THE PRESIDENT. The report of the Committee on City, County, and Township Organization is the next business in order. The Secretary will read the amendments of the Committee of the Whole.

THE SECRETARY read all the amendments of the Committee of the Whole, and then the amendment to section two as follows:

COUNTY SEATS.

"SEC. 2. No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years."

Concurred in.

THE PRESIDENT. The Secretary will read the amendment proposed by the Committee of the Whole to section three.

NEW COUNTIES.

THE SECRETARY read:

"SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided; nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of each county affected, voting at a general election, shall vote therefor. Portions of a county, when added to another county, or new counties when created, shall be liable for their just proportion of all debts and liabilities then existing of the county or counties out of which they are respectively formed or taken."

MR. WYATT. Mr. President: I move to strike out section three.

MR. EVEY. I second the motion.

THE PRESIDENT. The motion is not in order.

MR. EVEY. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out the words, 'nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of each county affected, voting at a general election, shall vote therefor.'"

MR. EVEY. Mr. President: I hope that that amendment will be adopted by the Convention. As this section now stands it will be impossible to form a new county in any portion of this State hereafter. There are many counties in this State of large area, and in course of time it will be necessary to divide them and form new counties, and without this amendment that can never be done. As it now stands, without the consent of the old counties no new county can be formed. I think this provision ought to be qualified, so that the people hereafter, if it should be necessary to form a new county, may have the privilege of doing so without asking the consent of the old counties. I hope the Convention will adopt this amendment.

MR. EDGERTON. Mr. President: I think that amendment should prevail. In the first place, one part of that clause is utterly senseless, it reads: "Nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of each county affected, voting at a general election, shall vote therefor." There is only one county affected, and that part of the clause, "of each affected," is nugatory. In the first place, it provides that no portion of a county shall be taken from one county—I suppose it means to add to another—unless a majority of all the qualified electors of each county affected, shall vote therefor. Now, sir, I object to that because theoretically it is wrong. It proceeds upon the theory that the inhabitants of a county have alone to be consulted in the organization of a new county. Sir, this matter of county organization is involuntary on the part of the people, it is compulsory. A county is an organ of the State, for the purpose of the administration of its police, of its finances, of the construction of its highways, taking care of its wharfs, and all that, and so I insist that the people of a county are not alone to be consulted. It seems to me that the amendment of the gentleman from Los Angeles is a judicious one and ought to prevail.

Mr. INMAN. Mr. President: I hope that the amendment offered by the honorable gentleman from Los Angeles will prevail. Take my own county; the people of Alameda County, outside of Oakland, may want a new county some time. Oakland to-day has about two thirds of the voters. Our interests are not identical at all. If Oakland wanted to prevent the division she could do it; strike this out and it would leave that matter to ourselves to decide. If we have got to consult Oakland we never can separate. I am satisfied that within two years our people will want to do that. I hope the amendment will be adopted.

MR. WYATT. Mr. President: I hope the amendment of the gentleman from Los Angeles will be adopted. I think it is too early in the history of California to say that we have completed the framework of the State as regards the erection of new counties. In the section as reported by the Committee of the Whole, we have prohibited the erection of new counties during the life of the Constitution. I hope that the day will come when the system of large landholding will give way in this State; when this State will be opened up to immigration; when the country will be settled up by small landholders; when a large population will be dotted over the valleys; when the resources of the country will be developed, and that we will be allowed the erection of some more new counties and Court Houses for the proper administration of justice in this State. From a selfish standpoint, I might oppose this amendment because my county now extends, the south half of it, below our Court House for one hundred miles. There is at least forty miles of that that some day ought to be erected into another county. If I was selfish I might claim that it should stand in Monterey County for all time to come. It is not for the best interests of the country that that should be the case. Many other instances might be given where new county seats will be needed in the future, and we ought not to stop the growth of this country in this way.

MR. TINNIN. Mr. President: This section three as reported by the Committee of the Whole does mean something, and in answer to the gentleman from Sacramento I will say, his criticism on that section is about as sharp as the pyramid of Cheops, in Egypt. The object is to prevent this indiscriminate creation of new counties. Carpetbaggers go to work and create a new county in order to place themselves in positions. Now,

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let us take another view of this question. Many of the counties of this State are in debt. Some of them owe large sums of money that requires the taxation to be high. Portions of these counties are desirous of evading that tax, and they seek to secede and unite themselves with other counties where the taxes are lower. That has been one of the inducements to bring about this disorganization of counties, in addition to this office scheme to which I have before alluded. It should be the policy of the State to curtail the expenses of the Government, and curtail the taxation of the people, and the more counties you create the more expenses you have to sustain. Instead of increasing the counties of the State it should be the policy of the State to decrease them. Take, for instance, the County of Alpine, that was created under an excitement. It is a small county incapable of self-support. If you strike out this portion of this section you open the door to more counties of that kind. I hope that the section will be retained as it is. It is necessary to curtail the expenses of the people of this State.

MR. LAINE. Mr. President: The gentleman from Trinity misapprehends the effect of this clause. If we retain it, it will prevent the abolition of these little counties. The point he makes about the debts of the county is already provided for in the latter part of the section, which says: "Portions of a county, when added to another county, or new counties when created, shall be liable for their just proportion of all debts and liabilities, then existing, of the county or counties out of which they are respectively formed or taken." But if this clause remains, we cannot get rid of Alpine, Mono, and some other small counties. I agree with him that the formation of these little counties is an outrage.

MR. DAVIS. Mr. President: I think, as Mr. Tinnin says, it does amount to something. It means that there never shall be any more new counties formed in the State of California. The objection that he makes, that the new counties would evade their share of the debt, is not good, because the new counties have had to pay their proportion to the county from which they were taken. I believe the time is coming when we will need new counties in California. The County of Nevada and the County of Placer, now extend along the line of the State of Nevada about one hundred miles. The residents of the eastern part of these counties have to travel about eighty to one hundred miles to their county seat, at an expense of twenty dollars or thirty dollars. If litigants take their cases from the Justice's Court to the County Court on Appeals, and there are five witnesses on each side, it costs about three hundred dollars expense to go to the county seat and return, besides the amount of time lost in doing so. Although our end of the county do not now demand a new county, but the time will come when the population will be such that we will need a new county, and if it did I do not think we could ever obtain it under the section.

MR. WEST. Mr. President: I hope the amendment of the gentleman from Los Angeles will be adopted, and if it prevails, I shall also move to strike out the words: "nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided." I think these provisions are too restrictive, and will control the people beyond any reasonable demand on the part of justice. I think the people in the future will be able to decide these matters intelligently for themselves. I hope the amendment will prevail.

MR. WHITE. Mr. President: I hope, too, that the amendment will prevail, for I have in my county several cases where it would do a very great injustice if we were bound up in this way. I trust that the clause will be struck out. There are provisions enough already to prevent these small counties being created. That is all we want. I am opposed to these small counties, and I know that they are got up sometimes in the interest of office hunters; but that would be going a little too far.

MR. HAGER. Mr. President: I have no objection to striking this paragraph out. It was put in there for the purpose stated by the gentleman from Trinity. So far as I am concerned personally, I have no objection to striking it out, but I wish to defend the grammar. I do not think the section is senseless, and cannot see the point of the objection of the gentleman from Sacramento on that ground.

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

The amendment was adopted.

MR. RHODES. Mr. President: I send up an amendment to section three.

THE SECRETARY read:

"Strike out all after 'therefore,' in line seven, and insert the following: 'Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the debts and liabilities of the county or counties from which such territory shall be taken.'"

MR. RHODES. Mr. President: The section, as it now reads, provides: "Portions of a county, when added to another county, or new counties when created, shall be liable for their just proportion of all debts and liabilities, then existing, of the county or counties out of which they are respectively formed or taken." Under that, a portion of a county might be made liable for the debts of another county.

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

On a division, the vote stood 46 ayes to 20 noes.

THE PRESIDENT. No quorum voting.

MR. LAINE. Ayes and noes. I think we are getting on dangerous ground here.

MR. BEERSTECHER. Mr. President: I do not see any improvement the amendment would make. The section now reads: "Portions of a county, when added to another county, or new counties, when created, shall be liable for their just proportion of all debts and liabilities then existing, of the county or counties out of which they are respectively formed or taken." Now, the gentleman's amendment is a mere change of phraseology, and it seems to me is a change for the worse. I think we had better stand by the article as adopted in Committee of the Whole, because that expressly says that the new county created, or the new territory created, shall be liable only for its proportion of the indebtedness of the old county, or the county from which the territory was taken, existing at the time of the creation of the new county, or at the time of the taking of the territory and placing it upon the other county.

MR. RHODES. I would ask what portions of the county should be liable, if not the whole?

MR. BEERSTECHER. If a certain portion of Tulare county were taken off and added to Kern County that portion of Tulare County that was taken off and added to Kern County should be liable for the existing indebtedness of Tulare County at the time of the division; but the whole of Kern County should not be liable. Therefore the word "portion" should be in there every time.

MR. EDGERTON. Mr. President: After the very luminous explanation of the constitutional question involved by my distinguished friend from Kalamazoo, who has just taken his seat, I think that the amendment, as offered by the gentleman from Yolo, should prevail.

MR. MILLS. Mr. President: There would be no means of enforcing this payment in a part of a county. Take, for instance, Alameda County. When that county was created, a portion of Contra Costa County was taken and a part of Santa Clara County was taken to form Alameda County. Alameda County assumed its proportion of the indebtedness of Contra Costa County. You could not levy and collect a tax on a portion of a county; therefore I hope that the amendment will prevail.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: There would have been some propriety in this amendment, if the portion which has been stricken out had been allowed to remain in the section, because then the people would have had something to say about whether they should have a county or not. But now it has become a matter with the Legislature. Now, since that power is lodged absolutely in the Legislature, I do not think it would be right and proper for the Legislature to arbitrarily say, when they are taking a portion of one county to add to another Congressional district, by adding it to another county for the purpose of making a representative in Congress, that that whole county should become responsible for any portion of the debt for which that portion stricken off is liable. It ought not to be so. That portion is no more liable when it is stricken off than it was before for any debt that may have existed. In fact its burdens are to be lighter when it is attached to these other counties. This arbitrary way of taking portions of counties for political purposes, for the purpose of advancing political interests, for making Congressmen, or even members of the Legislature, ought not to entitle them to say that a county should be saddled with indebtedness that has been created by another county.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: It seems to me that there is a new and novel doctrine being promulgated here. I confess that it is new and novel to myself, at all events; and I venture to assert that it is new to everybody; that nobody, here or elsewhere, ever heard of such oppression as to make a portion segregated separately and distinctively liable for its proportion of the debts of the county from which it was taken. I assert that such a proposition was never heard of before. The rule has been in all such cases, here in California and elsewhere, that the county to which the territory was added should be responsible for a just proportion of the indebtedness. That is the rule that has always prevailed. It is the only equitable and just rule. Now, let us see how this proposition would work. Accept this new theory that a portion shall be distinctively liable, and where do you find yourselves? It would necessitate a separate and distinct assessment for that particular territory, because when it is added to the other county its property is assessed and it becomes liable with the county to which it is attached for the debts and liabilities of that county. In addition to this, gentlemen say that it shall be liable separately for the liabilities of the county from which it is taken. Here you saddle upon it a double liability, and you necessitate the creation of a separate assessment or collection of the separate accounts for this particular part of the territory that is taken from one county and attached to another. Now who ever heard of such a proposition as this? It is manifestly new, novel, and absurd. I submit that it would require a system of counties and county governments for which there is no provision in law, and would necessitate a special statutory regulation for the assessment and collection of taxes, because this territory would have to be assessed twice. It would have to be assessed in common with the county to which it was attached under the law, and then, in order to fill the requirements of its special liability for the debts of the old county from which it was taken, there must be another assessment, another collection of taxes, another fund raised for a special purpose. Now, it seems to me that it is self-evident that this proposition is not desirable: that it is not only new and novel, but wrong in principle, and unjust. The proposition of the gentleman from Yolo aims to obviate this difficulty, and does obviate it, and, in my opinion, ought to be adopted. I hope it will, because if this new theory is to be adopted it will result at all events in great inconvenience, and I think in injustice, too.

MR. BEERSTECHER. I call the gentleman's attention to article ninth of the new Constitution of Missouri, it says: "When any part of a county is stricken off and attached to another county, the part stricken off shall be holden for and obliged to pay its proportion of the liabilities then existing, of the county from which it is taken."

MR. CAPLES. The gentleman had to go "all the way to Pike" for it, and notwithstanding the high authority of the precedent, I still maintain, Mr. President, that the proposition is wrong in principle, unjust, and ought not to prevail.

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MR. HERRINGTON. When a part of San Mateo County was added to Santa Cruz County, or vica versa, whichever way it was, were the debts saddled on to the whole county?

MR. CAPLES. Undoubtedly, always. It has always been the rule, when territory is taken from one county and attached to another county, that that other county becomes responsible for its proportion of the debts and liabilities. I submit that it is a just rule, because it must be remembered that territory is never taken from this county and given to that county only at the solicitation and with the consent of that other county. Now, if it was a thing that ever could be done, or would be done, that territory should be forced on to a county against the will of that county, then there might be an injustice in cases where there was a heavy indebtedness in the counties from which the territory was taken. But this is never done, never has been done, and never will be done.

MR. HERRINGTON. You have stricken out that provision allowing the county to have anything to say about it.

Mr. CAPLES. No, sir.

MR. HERRINGTON. Yes, you have.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I think, sir, that this amendment ought to prevail. For instance, the question is at this moment being agitated, of adding Santa Cruz County to Santa Clara County. Now, suppose that Santa Cruz County is added to Santa Clara, would it be just that we should pay a portion of Santa Clara's debts and then we would be separately assessed for our own debts, after Santa Clara had accepted us, debts and all? If such a thing did happen—it is not very likely to occur, but it might—we would have to pay all our debts and then a part of the debts of Santa Clara. If this amendment is not adopted, we would first be assessed for our own debts and then be assessed for Santa Clara's debts too. The county to which territory is added gets a great advantage in the increase of property on their assessment roll. They know what they are about when they take territory in, and they will not take the territory if it is an incumbrance. I think it is just that this amendment should be adopted.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I do not know but what it is a knock-down argument, because a similar proposition is in the Constitution of Missouri, but so far as I am concerned, it does not make any difference whether it is the Constitution of Missouri or any other Constitution. I hope that this Convention will have some intelligence of its own, and act upon fair and just principles in deciding these questions. Now, sir, I think it can be demonstrated as easily as that two and two make four, that the amendment ought to be adopted. Why, sir, it seems to me ridiculous to talk of making a portion of a county—only a portion of a county—liable for the debts properly belonging to the whole county to pay. Now, sir, I take it, that wherever any portion of a county is taken from one county and added to another, or portions of counties taken and a new county organized, that it is done by the concurrence of the people residing in the counties affected. I take it, that no portion of a county will be taken from one county without the concurrence of the county that receives that acquisition of territory. Now, why should not the whole of that county become responsible for the indebtedness? It is willing to take the territory, but not willing to take the debts. For instance, if a portion of San Joaquin County were taken from that county and added to Sacramento County, it would be with the concurrence of Sacramento County. If Sacramento County is willing to receive that acquisition of territory, it ought to be willing to pay its debts. Is not that easily understood? It seems to me that it is beyond argument. It is too clear to argue, that in that case the whole of Sacramento County ought to pay. If it were not so, the result would be inextricable confusion, to say nothing of the injustice of the thing. It would be unequal taxation if you were to adopt any other plan. I hope the amendment will prevail.

MR. RHODES. Mr. President: I desire to insert in my amendment the word "existing" before the word "debts."

THE PRESIDENT. If there be no objection, the word will be inserted. The Chair hears none.

Messrs. Steele, Wyatt, McConnell, Davis, and Evey demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. Rhodes, the ayes and noes were demanded by Messrs. Laine, McComas, Hunter, Larue, and Herrington.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Dunlap,	Jones,
Barbour,	Edgerton,	Joyce,
Barton,	Estey,	Kelley,
Belcher,	Evey,	Kenny,
Bell,	Farrell,	Kleine,
Boggs,	Filcher,	Larkin,
Boucher,	Freud,	Larue,
Burt,	Garvey,	Lavigne,
Campbell,	Glascock,	Lewis,
Caples,	Gorman,	Mansfield,
Chapman,	Grace,	Martin, of Alameda,
Charles,	Hall,	Martin, of Santa Cruz,
Condon,	Harrison,	McConnell,
Cowden,	Harvey,	McCoy,
Cross,	Heiskell,	McNutt,
Davis,	Hilborn,	Mills,
Dowling,	Howard, of Los Angeles,	Moreland,
Doyle,	Huestis,	Nason,
Dudley, of Solano,	Inman,	Ohleyer,
O'Sullivan,	Smith, of San Francisco,	Vacquerel,
Porter,	Soule,	Van Voorhies,
Pulliam,	Stedman,	Walker, of Tuolumne,
Reed,	Steele,	Webster,
Rhodes,	Stevenson,	Weller,
Ringgold,	Sweasey,	Wellin,
Rolfe,	Swenson,	West,
Schell,	Thompson,	White,
Shurtleff,	Townsend,	Winans,
Smith, of Santa Clara,	Turner,	Wyatt—89.
Smith, of 4th District,	Tuttle,	

NOES.

Andrews,	Herrington,	Laine,
Beerstecher,	Holmes,	McComas,
Freeman,	Howard, of Mariposa,	Waters,
Hager,	Hunter,	Mr. President—12.

The amendment, as amended, was concurred in.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section six.

INCORPORATION OF CITIES AND TOWNS.

THE SECRETARY read:

"SEC. 6. The Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns; and cities and towns heretofore organized or incorporated, may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith."

Concurred in.

THE PRESIDENT. The question is on concurring in the recommendation of the Committee of the Whole to strike out section eight. The Secretary will read the section.

CITY AND COUNTY OFFICERS.

THE SECRETARY read:

"SEC. 8. No person shall be eligible to a county or city office unless he has been a citizen and resident within such county or city for two years next preceding his election or appointment to an office therein."

The recommendation of the Committee of the Whole was concurred in.

THE PRESIDENT. The Secretary will read the amendment proposed by the Committee of the Whole to section nine.

THE SECRETARY read:

"SEC. 9. Any city may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for the last twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall at the end of sixty days thereafter become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charters so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election, held at least sixty days after publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others."

MR. WINANS. Mr. President: I move that the consideration of this section nine be postponed until two o'clock next Monday. My object in making this motion is because with the exception of the Chairman of this committee and myself, there are none of the delegates at large from the first Congressional district, which consists of the city and county of San Francisco, present. These gentlemen are unavoidably absent, and will be here by Monday afternoon at two o'clock. They desire to be heard upon the question of concurrence in the amendment adopted by the Committee of the Whole to section nine. They are opposed to section nine either in the form of the amendment or the original section. They desire it stricken out, and I wish for them to have a hearing upon this subject, because as it stands, it mainly concerns matters immediately affecting the interests of the city and county of San Francisco. It is a most important question, as it involves the very form of government and organization of that city. I state this because the other delegates of this Convention suppose that the representatives of the city and county of San Francisco were unanimous in their desire to have it

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passed. I find that the city itself is opposed it; the citizens are largely opposed to it; the press has denounced it, and it is intrinsically objectionable in the highest degree; and therefore it demands further consideration at the hands of this Convention. An opportunity should be given these gentlemen who are unavoidably absent to be here. I therefore make the motion that the consideration of this section be postponed until Monday at two o'clock P. M.

THE PRESIDENT. The gentleman's motion is not in order. You can move to have the section temporarily passed.

MR. WINANS. I move that it be temporarily passed.

MR. LARKIN. I would ask him how many of the delegation from San Francisco are absent?

MR. WINANS. All of them excepting Judge Hager and myself, of the delegates at large from that district.

MR. BEERSTECHER. I would ask if Judge Hoge is not a representative from San Francisco? I believe he is present.

MR. WINANS. Judge Hoge is a silent member.

MR. LARKIN. There are thirty direct representatives of San Francisco present, and three of its indirect representatives are absent. I think this Convention is just as well prepared to-day to act upon this as it will be next week. There may be three or four of these men that directly represent San Francisco absent next week. They appear to be here to-day, and I hope that this Convention will not put this over on account of those three gentlemen that indirectly represent San Francisco.

MR. WINANS. I was not guilty of the discourtesy of saying that these gentlemen were not representatives of San Francisco. I spoke of the delegates from the First Congressional district, and cast no reflection upon those who represent the city alone. But I think that those who represent the city and county in the form of a Congressional district, ought to have a hearing as well as those who represent the city as such.

MR. WELLIN. Mr. President: I hope that this motion will not prevail. We have been here now going on five months, and we are very anxious to get through with this work and go home. Three of these gentlemen are absent, and I am very sorry because I would like to have them here, but I do not know any good or substantial reason why this Convention should pass its work over in this manner. San Francisco is very well represented here, and if these gentlemen were particularly anxious to be here and attend to this matter they should be here instead of being away. I hope that no delay will take place, and I am satisfied that the people of San Francisco are very well satisfied with the article.

MR. WINANS. There are five absent.

MR. WELLIN. Then there are five absent, but the President has his vote like any other delegate. I hope it will not be passed over.

MR. INMAN. Mr. President: I hope it will be passed over temporarily. There is more in this section, perhaps, than a great many gentlemen think. I consider that the future of San Francisco depends upon this section. To my mind it is a damnable section. I think it is a matter of courtesy that it should be passed temporarily until these delegates are here to answer for themselves. No harm can come of it.

MR. WINANS. The passing of it will involve no loss of time whatever.

MR. FILCHER. Isn't it their own fault that they are not here now?

MR. INMAN. I don't know whether it is or not. Business may have called them away. Sickness may have called them away. It certainly injures no one to let it go over.

MR. STEDMAN. Isn't it a fact that these gentlemen are never here except when they want to be?

MR. INMAN. I think that is presuming a good deal, my young friend. I know not their business, their wants or wishes; nor do I think, my young friend knows. I hope it will pass temporarily.

MR. CAMPBELL. Mr. President: This is a question of very great importance and ought to be considered—if gentlemen will allow me to speak without talking so loud that I cannot hear myself. This is a question of great importance. Now we know that on Saturdays we do not have a very full house, as a general proposition. There are many gentlemen, members of this Convention, and especially those who represent the Congressional district which includes the City of San Francisco, who are compelled, by the nature and extent of their business, to be absent frequently, and more on that day than any other. But this is not a matter which affects San Francisco alone. It affects every city in the State, and it ought to be considered carefully before definite action shall be taken upon the subject. As the section now stands it includes the entire State, and, so far as the city which I have the honor in part to represent is concerned, we do not desire to be included in it. I believe the delegation from that county, with perhaps the exception of Mr. McCallum, who is absent, are united upon that subject.

MR. BARBOUR. One representative of Alameda County insisted that Oakland should be included.

MR. CAMPBELL. I am aware that Mr. McCallum introduced that amendment; but at the same time I am also aware, after consulting with my colleagues, that they are opposed to this section, as far as our county is concerned, and I think I conversed with Mr. McCallum afterwards, and he appeared to think that he had acted rather hastily in this matter and without due deliberation. I think that if he was here to-day that he would be in favor of at any rate leaving out the City of Oakland, where he resides. However, he will be here on Monday to speak for himself, I think. It will be really a needless task for us to go over this subject with a thin house, on Saturday, and then when the matter comes up on the second reading have another consideration of the subject. On Monday we will doubtless have a full house. There can be no harm in passing this section temporarily, and I trust that the Convention will do it.

MR. AYERS. Mr. President: I am disposed to give this section the fullest hearing possible, and if the gentleman from San Francisco will promise us that his colleagues will be here, I think I will vote to pass it.

MR. WINANS. Yes.

MR. AYERS. I want to see Mr. Barnes once more in his chair. This Convention has been longing for him. He has not been here since Christmas, and if the gentleman will promise to bring Mr. Barnes back I shall certainly vote for it.

MR. CAMPBELL. Mr. Barnes has been very sick, and is at death's door, or has been at death's door.

MR. WINANS. He has had a very narrow escape of his life. I think he will be up Monday.

MR. AYERS. I did not know that. I take it all back.

MR. SCHELL. Mr. President: I have this to say as my reason for asking the Convention to pass this section temporarily. We are here as a Convention to frame a Constitution which shall be acceptable to the people of this State. It is my earnest desire that we shall be able to present to the people of this State a Constitution which shall be superior to the one under which we now live, and unless we do we cannot reasonably expect a ratification by the people of our work. Now, sir, I do believe, and take it to be the desire of every member of this Convention, that we should be able to frame a Constitution better than the old one, and one which will be ratified by the people. I believe, to accomplish that result, that we should at all times have as full a Convention as possible. If matters of such vital importance as this can be acted upon by a full Convention, it will do much toward the ratification of the Constitution we present. I believe that it will give much better satisfaction to the people of this State and all parties that are represented here. Now, it is said that many of the delegates are absent, and that they can be here as well as we, but I would remind gentlemen that many of these gentlemen have matters of grave importance upon their hands to attend to, and they cannot readily set these matters aside so that they may remain here and discharge their duties constantly. Now, I take it that no member of this Convention expected, when he first came here, to remain here longer than one hundred days. But that time has been very materially extended, and how much longer we will remain we cannot tell. It is not to be expected that gentlemen will come here and sacrifice their entire business at home. I do not think we have a right to complain of members of this body who go away to attend to their home matters. I hope the section will be passed over.

MR. BARTON. Mr. President: I desire to remind members of this Convention that we are building up very rapidly an expense of one hundred thousand dollars, and delays, in my opinion, are very dangerous at this particular time. Now, sir, if the Chairman of the Committee on City, County, and Township Organization desires this delay, I will vote for it; otherwise, I shall vote against it.

MR. HOWARD. Mr. President: I hope we shall pass this section over, and for the practical reason that if we do not we will consume the day in discussion without coming to a vote. It is obvious that there is too much controversy in it to be disposed of to-day. I desire, for one, to hear everybody who represents San Francisco, and I think it is no more than right and just to pass it.

THE PRESIDENT. The Chair will simply say that this is merely a motion to temporarily pass this section. If the Convention gets through the balance of the article they can take up this section if they desire it. It would occasion no delay in the business whatever.

MR. GRACE. Mr. President: I am in favor of getting along with the business of this Convention, and for that reason I am in favor of passing this section and letting it go over until Monday, for this reason: The same thing has occurred here on nearly every Saturday for the last few weeks, that when business up that was contrary to the wish of some of the representatives on this floor, with a thin house, they gave notice of a motion to reconsider, and it took up all day Monday to get back where we started from. For that reason I shall vote to pass it over.

MR. EDGERTON. Mr. President: I think as a matter of ordinary parliamentary decorum, we should hear from the Chairman of the committee. I would ask him if he is willing that this section should be temporarily passed?

MR. HAGER. I am much obliged to my friend for assisting me to get the floor. I have been trying to get the floor during the whole of this discussion. I have not been able to, even on one of the most important sections that has passed. I had an amendment to offer, but I was not able to get the floor—so many other gentlemen were ahead of me. I have no objections to this postponement. There is certainly a great deal of misapprehension about the effect of this proposition, and if the Convention will indulge me for about five minutes I will explain it. In the first place, it is not intended to be independent of the Legislature at all. It has never been constructed to be independent of the Legislature. It says: "Any city may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State." That is what it does, and then the other provisions provide that the Legislature, by general law, shall regulate corporations in their organizations. The whole thing is under the control of and subject to legislation.

MR. WYATT. I rise to a point of order. The gentleman is not confining himself to the subject in hand, which is the motion to temporarily pass.

MR. HAGER. I asked the Convention to indulge me for five minutes. I have no objection to the matter being postponed. I want to call the attention of the gentlemen to the platform upon which we were elected, where it says that the Legislature shall provide for the incorporation of cities and towns in this manner. Now I ask my colleague, Mr. Winans, whether he stands upon his platform or not, in which we pledged ourselves to this very section that is incorporated in this section? This proposition is framed with the very letter and words of the platform under which we were elected. This whole article has been framed in reference to its being local, with the people, and not with the Legislature, subject to special legislation, and when you take out one stone from the arch the whole thing falls.

MR. WINANS. I do not consider that standing on that platform is the question involved in this motion at all.

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MR. HAGER. I have no objections to passing it over.

MR. HEISKELL. I desire to ask the gentleman by what authority that platform was given to the people?

MR. HAGER. That platform was adopted at a public meeting held by the Non-Partisans in Platt's Hall, and that platform we all subscribed to.

MR. HEISKELL. It came up into our county without any father, and I did not know how it got into the world.

MR. McFARLAND. Isn't that platform full of flies already?

MR. HAGER. As the gentleman is full of molasses, he will catch them.

THE PRESIDENT. The question is on the motion to temporarily pass the section.

The motion prevailed.

THE PRESIDENT. The Secretary will read the amendment to section twelve.

POLICE AND SANITARY REGULATIONS.

THE SECRETARY read:

"SEC. 12. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws."

MR. CROUCH. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section twelve by adding thereto the following: 'and may make appropriations of money for the detection, arrest, and conviction of any person or persons committing offenses within their respective limits.'"

MR. ROLFE. I would like to ask the gentleman, if this police power does not include that?

MR. CROUCH. Mr. President: I will state that I understand this section gives these counties, cities, and towns authority to make police and sanitary regulations, but that does not necessarily imply the power to make appropriations of money for the arrest of persons, and for the expenses arising therefrom. Now, it is only a few days since that three barns have been burned in our county, and there is no way of finding out who did it. That is the reason why I want to fix it so that they should have power to make appropriations, and offer an inducement for officers to go to work and find out. The Legislature now has power to do it. I understand that where the power is not withheld, it is granted or possessed by the Legislature, but there is no means of compelling the Legislature to give this power. I care not in what form it is, but I think the provision ought to be made.

MR. CAMPBELL. Mr. President: It seems to me perfectly clear, that under section twelve, as it stands, they would have that power. They have not that power now, because the Supervisors have simply limited powers conferred upon them by law. But where you give them the general powers to make all this class of police, sanitary, and other regulations as are not in conflict with general laws; where you prohibit the Legislature from passing special laws, as we have done, it is clearly an incident to that police power to make such appropriations, where they are not absolutely limited by law. It seems to me that the amendment is wholly unnecessary, but if there is any difference of opinion among gentlemen, I would be willing to vote for it.

MR. EDGERTON. Mr. President: I think the gentleman from Alameda is entirely right in his construction of this section, and that unless there is some clause in some other part of the Constitution—and my impression is that there is—imposing a restraint as to the appropriation of money, I think there is no doubt about it. If there is such a clause, it seems to me that the amendment should be adopted.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment.

The amendment to the amendment was rejected.

The amendment of the Committee of the Whole was concurred in.

THE PRESIDENT. The question is on concurring in the recommendation of the Committee of the Whole to strike out section thirteen. The Secretary will read the section.

LOCAL TAXES.

THE SECRETARY read:

"SEC. 13. Taxes for county, city, town, school, and other local purposes must be levied on all subjects and objects of taxation. In addition to that which may be levied for the payment of the principal and interest of existing indebtedness, the annual rate on property shall not exceed the following: For county purposes, in counties having two million dollars, or less, shall not exceed —— cents on the one hundred dollars' valuation; in counties having six million dollars, and under ten million dollars, such rate shall not exceed —— cents on the one hundred dollars' valuation; and in counties having ten million dollars, or more, such rate shall not exceed —— cents on the one hundred dollars' valuation. For city and town purposes such annual rate on property in incorporated cities and towns shall not exceed —— cents on the one hundred dollars' valuation; and in any city and county, with consolidated government, such rate shall not exceed —— cents on the one hundred dollars' valuation."

PROFIT ON COUNTY MONEY.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section nineteen.

"SEC. 19. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law."

Concurred in.

THE PRESIDENT. The Secretary will read the amendment of the the Committee of the Whole to section twenty.

INDEBTEDNESS.

THE SECRETARY read:

"SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two-thirds of the qualified voters thereof voting at an election to be held for that purpose; and in cases requiring such assent no indebtedness shall be incurred (except by a county to erect a Court House or Jail, or of a city, or city and county, for the construction of waterworks, or for their acquisition by means of condemnation), to an amount, excluding existing indebtedness, in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring such indebtedness, and unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void."

MR. HAGER. Mr. President: I offer a substitute for the section.

THE SECRETARY read:

"SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two-thirds of the qualified voters thereof voting at an election to be held for that purpose; and in cases requiring such assent no indebtedness shall be incurred (except by a county to erect a Court House or Jail) to an amount, excluding indebtedness existing at the adoption of this Constitution, in the aggregate exceeding, in any county, city, or town, two per centum, or in any city and county, with a consolidated government, four per centum, on the value of the taxable property therein, respectively, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring such indebtedness, and unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void"

MR. HAGER. Mr. President: The object is to strike out the provision in regard to the acquisition of waterworks in the City and County of San Francisco, and to increase the allowance there from two to four per cent. That will enable the city, if they see fit, to establish waterworks. That clause was inserted by an amendment, and has been subjected to a great deal of criticism, as it was intended to purchase the Spring Valley Waterworks. In all other respects it remains the same, except the use of the term, "existing at the adoption of this Constitution." I hope that the amendment will be adopted.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: That directly prevents the construction of waterworks, or their acquisition in any way. Now, I believe it would be better to retain that section as it is, with the two per cent. limitation, which I believe to be a wise restriction, and the insertion of the words "purchase or," so that the section will read: "except by a county to erect a Court House or jail, or of a city, or city and county, for the construction of waterworks, or for their purchase or acquisition by means of condemnation." Now, it will be observed, that as the section stands, it enables a city to acquire waterworks, but it enables them to acquire them only in two ways—by construction and by condemnation. Now, it might be that it would be advisable to purchase waterworks without resorting to the means of condemnation. It would not leave the Board of Supervisors the right to buy, but it would require a vote of two thirds of the people in favor of the purchase. Then the terms would be known in advance. They would know just what they were going to pay for it. I do not believe that it is in the power of any corporation to induce two thirds of the electors to purchase waterworks at too high a figure. Now, it will be observed, that if you go to work to acquire by means of condemnation, you have got to get a vote of two thirds in order to authorize the condemnation; but you cannot tell what the amount of the purchase money will be until the condemnation takes place. In other words, the people will have to vote for a contract without any knowledge whatever of the price that they will have to pay; because, if is done by condemnation, that is a proceeding in Court which binds the parties, and if the price is fixed in that way, the city would have to pay whatever the bargain was, a good one or not. On the other hand, if you give them the privilege of purchasing them, they know beforehand exactly how much they have to pay, and the people then vote upon that question understandingly. I question very much whether it will be policy for any city to acquire waterworks by purchase, or condemnation, or otherwise; but still it may be to the advantage of a city to do so. It has been in the City of New York a matter of very great advantage, and I think it would be perfectly safe to leave this matter in that shape—to give the power of construction, or purchase, or condemnation, subjected to a vote of two thirds of the people. I am opposed to the amendment as it stands, simply because it leaves out that power on the part of the city to purchase.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I do not suppose the Convention understands this amendment. It has been criticised by some of the press of San Francisco, because we allowed two per cent. every year. That was corrected to not exceeding two per cent. The county might, by a

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vote of the people, go in debt every year two per cent. in addition to existing indebtedness. In other respects it is the same as it was in regard to all the other counties of the State, and in San Francisco I have changed it to four per cent. The greatest amount that could be raised by the people of San Francisco would be four per cent. on the taxable property of that city and county. The taxable property is about four million dollars. In that case all that they could raise would be sixteen million dollars. That is intended to cover—in case they see fit to obtain waterworks—that is intended to give them the power to do it by a vote of the people under this increased license. Across the bay Oakland may go in debt to any extent she sees fit. In that respect I think the amendment is better than if we put in such a clause. It has been said that this section is a constitutional provision to purchase Spring Valley. If we put it in that form, to do a thing by general taxation without specifying the cost, we accomplish the same purpose. Now, the whole proposition is simply this: That no county or city shall incur an indebtedness or liability exceeding in any one year the amount of revenue provided; that each county shall raise revenue each year for all county expenses. There is no limitation upon the amount of taxes for general county purposes. They may make it two or three per cent., or six per cent. for county purposes, for the necessities of the county, but if they want to go in debt for any purpose beyond the ordinary expenses of government, they must submit it to a vote of the people.

MR. REYNOLDS. Mr. President: I am sorry to say I cannot agree with the gentleman. It seems to me in attempting to remove an objection he has fallen into the very error he seeks to avoid. If I understand the amendment it permits San Francisco to incur an indebtedness of four per cent. by a vote of two-thirds of the people. But they may incur that indebtedness for any purpose whatever.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Hager.

Division was called for, and the vote resulted in 48 ayes to 28 noes—no quorum voting.

The ayes and noes were then demanded by Messrs. Ayers, Wyatt, Brown, Reynolds, and Holmes.

MR. CROSS. Mr. President: There are localities in this State where levees are necessary, and this rate of two per cent. is not sufficient to build the levees needed, and I am not sure that four per cent. is enough. If we adopt such a provision as this there are localities in this State that will be ruined, because the people could not protect their property. This amendment therefore ought to prevail.

MR. CAMPBELL. I ask for a division of the question.

THE PRESIDENT. Not in order. The Secretary will call the roll.

The roll was called, and the result announced—ayes 51, noes 50.

MR. FREEMAN. I offer an amendment.

THE PRESIDENT. No amendment is in order; the substitute is adopted.

MR. EDGERTON. I wish to have the word "of," in line seven, changed to "by." This is merely to correct the grammar of the gentleman from San Francisco, Judge Hager.

THE PRESIDENT. The gentleman is looking at the wrong document; there is no "of" now in the section.

MR. MCFARLAND. I am sorry that no amendment is in order. I hope the section will be stricken out. A Board of Education, where it is absolutely necessary to build a school house, could not do it under this law. I hope the whole thing will be voted down.

MR. HAGER. It is no limitation upon taxation for the purposes of government. There is no limitation upon regular revenue.

MR. MCFARLAND. Suppose two thirds of the people want to incur a debt of more than two per cent., do you say they shall not?

MR. HAGER. The committee reported it at five per cent., but the Committee of the Whole cut it down to two per cent. I would be willing to make it five per cent.

THE PRESIDENT. The Secretary informs me that he has made an error in the vote on the last amendment. It should read: ayes 51, noes 52—negatived. The Secretary will call the roll over again.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Hunter,	Smith, of 4th District,
Barry,	Laine,	Soule,
Cowden,	Larkin,	Stevenson,
Davis,	Larue,	Swenson,
Dean,	McComas,	Tinnin,
Dunlap,	McNutt,	Townsend,
Edgerton,	Moffat,	Tully,
Evey,	Moreland,	Turner,
Hager,	Murphy,	Waters,
Heiskell,	Neunaber,	Webster,
Herold,	Porter,	Weller,
Holmes,	Reed,	Winans,
Howard, of Los Angeles,	Rhodes,	Wyatt—41.
Howard, of Mariposa,	Schell,	

NOES.

Ayers,	Chapman,	Freeman,
Barbour,	Charles,	Freud,
Barton,	Cross,	Glascock,
Beerstecher,	Crouch,	Gorman,
Belcher,	Dowling,	Grace,
Bell,	Doyle,	Hale,
Boggs,	Dudley, of Solano,	Hall,
Boucher,	Estey,	Harrison,
Burt,	Farrell,	Harvey,
Campbell,	Filcher,	Herrington,
Hilborn,	McFarland,	Steele,
Huestis,	Morse,	Sweasey,
Inman,	Nason,	Tuttle,
Jones,	Ohleyer,	Vacquerel,
Kelley,	O'Sullivan,	VanVoorhies,
Kenny,	Pulliam,	Walker, of Tuolumne,
Lavigne,	Reynolds,	Wellin,
Lewis,	Rolfe,	West,
Mansfield,	Shurtleff,	White,
Martin, of Santa Cruz,	Smith, of Santa Clara,	Mr. President—62.
McConnell,	Smith, of San Francisco,	

MR. CAMPBELL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after 'of,' in line eight, 'purchase or.'"

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: That will simply change the exception so that the section will read as follows:

"SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two thirds of the qualified voters thereof, voting at an election to be held for that purpose; and in cases requiring such assent, no indebtedness shall be incurred (except by a county to erect a Court House or Jail, or of a city, or city and county, for the construction of waterworks, or for their acquisition by means of purchase or condemnation), to an amount, excluding existing indebtedness, in the aggregate exceeding two per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring such indebtedness, and unless before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void."

As it is, two thirds of the people must vote in order to do it. I think it is better to retain the section as it is, with the two per cent. limit, and the permission to purchase or condemn waterworks. It may be advisable to purchase waterworks without condemnation, and this will require a vote of two thirds of the people. If waterworks are to be acquired by means of condemnation, the people, when they vote, cannot know what price is to be paid. If the price is fixed too high there is no escape, but if they are allowed to purchase, the people know how much they have to pay before they vote. I am doubtful whether it will ever be of any advantage to a city to purchase waterworks, but the time may come when they will have to do it.

MR. SHURTLEFF. Mr. President: There are cities that have not yet got waterworks, and I look upon the amendment as a very proper one. I hope it will be adopted.

MR. LAINE. Mr. President: I hope that all these amendments will be voted down, and that some member will move to strike out all the latter part of the section; it simply hampers the people unnecessarily.

MR. FREEMAN. Mr. President: I hope, with the last gentleman, that all amendments will be voted down until we come to the one indicated by him. A two-thirds vote ought to be sufficient to guard against abuses. The rest of the section is merely a limitation upon the right of self-preservation.

MR. CROSS. Mr. President: I can imagine a number of emergencies which would make the section very injurious. Suppose that a calamity should happen to San Francisco like the one that happened to Chicago; what could the city do? School houses would have to be rebuilt; all their public works would have to be reconstructed, in order that the city might go forward. Under this iron-bound rule the city would have to be abandoned. The City of Marysville was flooded two years ago, and it became a question whether the city should be abandoned or the levees rebuilt. They levied a tax of four per cent., which was as much as the city could stand, and incurred an indebtedness besides. It was a necessity. They had a right to use their discretion, and say whether they would abandon their homes or not. If this rule had been in force they must have abandoned the city. If we put in any such iron-bound rule we shall make a very great mistake. If we require a two-thirds vote I believe that is ample protection.

MR. CAMPBELL. If that is the proper construction to put upon it, I would be willing to withdraw my amendment till a vote could be taken on striking out that part of the section. My impression is that the adoption of this amendment would not interfere with it.

THE PRESIDENT. The question is on the amendment.

Lost.

MR. LAINE. Mr. President: I now offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'purpose,' in line five, down to and including the word 'and,' in line twelve, and insert 'nor' before the word 'unless,' in said twelfth line."

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: I hope this amendment will be adopted. It seems to me that when two thirds of the people of a town, county, or school district find it necessary to expend some money, either for building levees, Court Houses, or school houses—when two thirds of them come together and vote to expend a certain amount of money, they should be permitted to do so. If we limit them to two per cent., or four per cent., when the emergency arises, that is sufficient. The gentleman from Nevada has spoken of Marysville. I can see how there may have been a necessity of the same kind in Sacramento last year.

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If the levees should give way and the town be flooded, there would be a necessity for a larger expense even than five per cent. Suppose a school house burns down after the taxes for the year are levied. They must wait a year before they can expend even two per cent. to rebuild that house.

MR. CAPLES. If we want to build a palace, of course it won't.

MR. BELCHER. It might not. The districts are not all wealthy districts. Many of them have comparatively a small amount of property. If two thirds of the people want to spend a certain amount of money, they have a right to do it. It is safe to trust them.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: What is it that is proposed to be done there? The proposition is, that we shall remove all restrictions from the taxing power. The power to tax is unlimited in this State. It is proposed to allow the people to vote any tax, and perhaps the taxpayers themselves will be overruled by means of colonization, as we reduced the limit of residence yesterday from ninety to thirty days. Are we prepared to strike out all restrictions, and leave the taxing power free to confiscate the property of the people? The Constitution framed thirty years ago provided a limitation, and wisely, too. In that thirty years we have had occasion to realize the wisdom. What would have been the condition of some of the counties only for the veto of Governor Haight? They would have been bankrupt. It is a dangerous power to leave unchecked. The voters, in many instances, are in the majority. Take, for instance, the attempt made last Winter in the Legislature in relation to the indebtedness of El Dorado County. Delegations of taxpayers were here working for the bill. It was favorable to the taxpayers, and when it was submitted to the people, the taxpayers all voted for it; but it was defeated by the non-taxpayers. This illustrates the danger of leaving the taxing power unrestricted. It may be used to the extent of confiscation. Our people are subject at times to a mania for expenditure. Gentlemen will recollect when subsidy measures were extremely popular. Now such a measure could not get a corporal's guard. But who knows when it may come back? Certainly, if the experience of the past is worth anything, we should put in these safeguards. The gentleman says we cannot build school houses. Not if we make palaces out of them, instead of school houses. But I deny the legitimacy of a tax on property to build such houses. It is robbery. It is not necessary to make such use of the people's money for such purposes. Here is our County Hospital, built for the paupers of the county, which cost one hundred and thirty thousand dollars. That illustrates this spirit that is shown. What will two per cent. do? It is a poor school district in which there is not fifty thousand dollars taxable property, and would not two per cent. of that build two school houses? I am opposed to taking the shackles off of the taxing power.

MR. BEERSTECHER. You would oblige me very much by pointing out where there is any limit in the present Constitution.

MR. CAPLES. Three hundred thousand dollars is the limit.

MR. BEERSTECHER. Where is any limit for counties and cities?

MR. CAPLES. So much the worse. [Laughter.] It fixes the limit for the State, and I would go further and fix it for the counties. We find that the municipal indebtedness is greater than the State indebtedness.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: The compromise bill that the gentleman speaks of, in reference to El Dorado County, was not in our interest. The gentleman says the taxpayers voted for it. Such is not the case. The taxpayers voted against it because it was robbery. These people had a contract to build a road. They built it two thirds of the way and stopped. We said to them: complete your road and we will pay you the balance. El Dorado is ready to pay every dollar she owes, but she does not owe this road anything. When some men want to sneer at a county they refer to El Dorado. She was the mother county of this State. She has paid more money in proportion to population than any other county in this State. She has done more to develop the resources of this State than any other county. She never repudiated anything that was just.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Santa Clara, Mr. Laine.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Caples, West, Wyatt, Huestis, and Campbell.

The roll was called, and the amendment adopted by the following vote:

AYES.

Barbour,	Grace,	McNutt,
Beerstecher,	Hale,	Morse,
Belcher,	Harrison,	Murphy,
Bell,	Harvey,	Neunaber,
Boucher,	Herold,	Ohleyer,
Burt,	Hilborn,	O'Sullivan,
Campbell,	Holmes,	Reed,
Condon,	Huestis,	Reynolds,
Cowden,	Inman,	Ringgold,
Cross,	Jones,	Rolfe,
Davis,	Joyce,	Schell,
Dowling,	Kelley,	Shurtleff,
Doyle,	Kenny,	Smith, of 4th District,
Dudley, of Solano,	Laine,	Smith, of San Francisco,
Edgerton,	Larue,	Soule,
Estey,	Lavigne,	Thompson,
Evey,	Mansfield,	Turner,
Farrell,	Martin, of Alameda,	Vacquerel,
Filcher,	McComas,	Van Voorhies,
Freeman,	McFarland,	Waters,
Wellin,	White,	Mr. President—65.
Wickes,	Winans,	

NOES.

Andrews,	Hall,	Steele,
Ayers,	Heiskell,	Stevenson,
Barton,	Herrington,	Sweasey,
Boggs,	Howard, of Los Angeles,	Swenson,
Brown,	Hughey,	Tinnin,
Caples,	Hunter,	Tuttle,
Charles,	Larkin,	Walker, of Tuolumne,
Dean,	Lewis,	Webster,
Freud,	McConnell,	Weller,
Gorman,	Porter,	West,
Hager,	Rhodes,	Wyatt—33.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole, as amended.

Concurred in.

LOANING CREDIT.

THE PRESIDENT. The question is upon concurring with the recommendation of the Committee of the Whole in striking out section twenty-one. The Secretary will read.

THE SECRETARY read:

"SEC. 21. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation or company, or make any appropriation, or donation, or loan its credit to, or in aid of, any person, corporation, company, or institution."

The recommendation of the Committee of the Whole was concurred in.

STREET FRANCHISES.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section twenty-two. The Secretary will read.

THE SECRETARY read:

"SEC. 23. No law shall be passed by the Legislature granting the right to construct and operate a railroad within any city, town, village, or on any public street or highway thereof, without the consent of the municipal or other proper local authorities having the control of such street or highway proposed to be occupied by such railroad."

Concurred in.

GAS AND WATER PRIVILEGES.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section twenty-three. The Secretary will read.

THE SECRETARY read:

"SEC. 23. In any city where there are no public works owned and controlled by the municipality for supplying the same with artificial light and water, any company duly incorporated by the laws of this State shall, under the direction of the Superintendent of Streets of said city, have the privilege of disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and of making connections therewith, so far as may be necessary for introducing and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, for which the same or either may be used, upon the conditions following: Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company introducing and supplying gaslight or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city, and used for municipal purposes; and such company introducing and supplying water shall also furnish the same, free and without charge, to the Fire Department, and for the extinguishment of fires. Each company, its property and franchise, shall be liable to such city and its inhabitants for the performance of these conditions."

Concurred in.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section twenty-four. The Secretary will read.

THE SECRETARY read:

"SEC. 24. In counties or cities having more than one hundred thousand inhabitants no person shall, at the same time, be a State officer and a city or county officer, nor hold two city or county offices."

Concurred in.

STREET IMPROVEMENT.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in their amendments to section twenty-five. The Secretary will read.

THE SECRETARY read:

"SEC. 25. No public work or improvement of any description whatsoever shall be done or made in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment, in proportion to benefits on the property to be affected or benefited, shall be levied, collected, and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated under the laws of this State, shall, under the direction of the Superintendent of Streets, and under such regulations

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as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof."

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: I move that the Convention non-concur with the recommendation of the Committee of the Whole to section twenty-five. Section twenty-three is substantially similar in character, almost identical in language with that portion of the present section now proposed to be stricken out, and it seems an incongruity that the Committee of the Whole has stricken out section twenty-three, and that the Convention should now affirm that action, and yet should sustain that portion of section twenty-five to which objection is here raised, because, as I say, the latter involves the direct principles of the former, and while it possesses certain of the objectionable questions of the former it has none of the merits. Now, here is this proposition:

"No public work or improvement of any description whatsoever shall be done or made in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be affected or benefited, shall be levied, collected, and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated under the laws of this State, shall, under the direction of the Superintendent of Streets, and under such regulations as the municipality may prescribe, for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof."

We adopt, it is true, the plan of taking this power from the Legislature and giving it to the local authorities; and then we go further and propose to take the power away from the local Boards and give it absolutely to an individual. It is true, we qualify the right to that extent that we say it shall be exercised under such regulations as the municipality may prescribe, and that the city shall have the right to regulate charges, but that is only regulating the *modus operandi*.

MR. CAMPBELL. It says, under such regulations as the municipality may prescribe for damages and indemnity for damages.

MR. WINANS. What does that mean? What injuries may or may not be possible? It only gives the municipality power to control the mode of action, and the means of indemnity under certain circumstances, which circumstances might be difficult to reach, or impossible to be determined. It is a limit without specifying even the character of damages, without prescribing any legal criterion whereby they may be determined. Why, sir, I never heard of such a thing as placing an individual in a position where he may defy the Government. It is well enough to say that the people shall be governed by the supreme authority of the State, or by the subordinate authority of the subdivisions, but when it comes to elevating a man above the law, whereby Government is confronted, and defied, and trampled on, I say we are going too far, and we should consider what we are doing and revoke our action. I submit that it is not only wrong in principle, but absolutely in contradiction of the doctrine which we established when we repudiated section twenty-three.

MR. FREEMAN. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out, in lines five and six, the words, 'collected and paid into the city treasury.'"

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. President: I desire to call attention to the fact that under the provisions of section twenty-five no street work can be done in any city until the entire assessment is paid into the city treasury. Assume that a certain block needs to have the street repaired in front of it. There may be twenty owners upon it. Nineteen may pay the full amount, but the twentieth either will not or does not pay. There can be no contract let for the repairing of that street. The street may be in a ruinous condition. It may be utterly impassable, and in such condition as to render the city liable for damages for injuries to persons, and yet under this provision not a finger can be raised towards fixing it until the entire amount is paid in. It is wrong.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I hope the amendment will not be carried. This part of the section refers to the original opening of streets, and not to repairing them. It is true that under this system there may be some delay, but a provision of this kind will save from twenty-five to fifty per cent. Of course, if any such case should occur as the gentleman mentions, in the opening of a street, the party could be compelled to pay up by judicial proceedings. It is absolutely necessary to do something to reduce the enormous expenses of street work. It is one of the greatest evils that the people in large cities have to bear.

The amendment was lost.

MR. WINANS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all after the word 'performed,' in line eight."

THE PRESIDENT. That will leave the section as it was reported by the committee.

MR. HAGER. The question will be presented whether the report of the Committee of the Whole shall be concurred in or not? I wish to offer an amendment.

THE SECRETARY read:

"In line eleven, strike out the word 'under,' and insert 'for such purpose, under and by authority of;' and in line twelve, before 'regulations,' insert 'general.'"

THE PRESIDENT. The question is upon the amendment to the amendment offered by the gentleman from San Francisco, Judge Hager.

Adopted.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Winans.

Lost.

MR. HERRINGTON. Mr. President: I wish to offer an amendment.

THE SECRETARY read:

"Amend the section, as amended by Committee of the Whole, as follows: strike out all after the word 'performed,' in line eight, and insert in lieu thereof: 'no exclusive right or privilege shall ever be granted to any individual, incorporated company, or association, of using the public streets or thoroughfares of any city, city and county, or town, for supplying the same, or the inhabitants thereof, with gas or other commodity for illuminating purposes, or with water for domestic or other uses; nor shall such privileges ever be granted upon more favorable terms to one company or individual than to another.'"

MR. HERRINGTON. The objections made by the gentleman from San Francisco, Mr. Winans, are good, and the object of this amendment is to provide against the possibility of the abuses which he points out.

MR. HOWARD, of Los Angeles. I object to that section because it destroys all competition.

MR. HAGER. I rise to a point of order. The Convention has refused to strike this out.

THE PRESIDENT. It is not well taken. The rule expressly provides otherwise. If the gentleman will examine the rule he will find he is mistaken. The question is upon the amendment.

Lost.

NOTICE OF RECONSIDERATION.

MR. CROSS. I hereby give notice that I will, on Monday next, move to reconsider the vote by which the Convention refused to strike out of lines six and seven, of section twenty-five, the words, "collected and paid into the city treasury."

MR. HILBORN. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words, 'Superintendent of Streets,' in line twelve, and insert the words, 'proper municipal authorities.'"

MR. HAGER. Why not say: "Superintendent of Streets or other municipal authorities."

MR. HILBORN. I will change it to that effect then.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Solano, Mr. Hilborn.

Adopted.

THE PRESIDENT. The question is upon concurring with the amendment of the Commitee of the Whole, as amended.

Concurred in.

ADDITIONAL MEMBERS OF A COMMITTEE.

The President appointed as additional members on the Committee on Revision and Adjustment, under the resolution adopted on the tenth instant, Messrs. Shafter, Howard of Los Angeles, Graves, Reed, Winans, and Waters.

ADJOURNMENT.

At two o'clock P. M. the President, in accordance with resolution this day adopted, declared the Convention adjourned to Monday, February seventeenth, eighteen hundred and seventy-nine, at nine o'clock and thirty minutes A. M.

ONE HUNDRED AND FORTY-THIRD DAY.

SACRAMENTO, Monday, February 17th, 1879.

The Convention met at nine o'clock and thirty minutes A. M.

SECRETARY SMITH. Gentleman of the Convention: In the absence of the President and President pro tem., it is my duty to call the Convention to order. I ask you to name a Chairman.

MR. INMAN. I nominate Mr. Murphy, of Del Norte.

Mr. Murphy was elected and took the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Burt,	Farrell,
Ayers,	Caples,	Filcher,
Barbour,	Charles,	Garvey,
Barry,	Cross,	Gorman,
Barton,	Davis,	Grace,
Beerstecher,	Dean,	Graves,
Bell,	Dowling,	Harrison,
Biggs,	Doyle,	Heiskell,
Blackmer,	Dunlap,	Herold,
Boucher,	Estey,	Herrington,
Brown,	Evey,	Holmes,

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Howard, of Mariposa,	McNutt,	Smith, of San Francisco,
Huestis,	Moffat,	Soule,
Hughey,	Moreland,	Steele,
Hunter,	Morse,	Stevenson,
Inman,	Murphy,	Swenson,
Jones,	Nason,	Swing,
Joyce,	Neunaber,	Tinnin,
Kelley,	Noel,	Tully,
Kenny,	Ohleyer,	Turner,
Kleine,	O'Sullivan,	Tuttle,
Laine,	Porter,	Vacquerel,
Larkin,	Prouty,	Walker, of Tuolumne,
Larue,	Pulliam,	Waters,
Lavigne,	Rhodes,	Webster,
Lewis,	Ringgold,	Weller,
Mansfield,	Rolfe,	Wellin,
Martin, of Alameda,	Schell,	West,
Martin, of Santa Cruz,	Schomp,	Wickes,
McComas,	Shurtleff,	White,
McConnell,	Smith, of Santa Clara,	Wyatt.
McFarland,	Smith, of 4th District,	

ABSENT.

Barnes,	Glascock,	Overton,
Belcher,	Gregg,	Reddy,
Berry,	Hager,	Reed,
Boggs,	Hale,	Reynolds,
Campbell,	Hall,	Shafter,
Casserly,	Harvey,	Shoemaker,
Chapman,	Hilborn,	Stedman,
Condon,	Hitchcock,	Stuart,
Cowden,	Howard, of Los Angeles,	Sweasey,
Crouch,	Johnson,	Terry,
Dudley, of San Joaquin,	Keyes,	Thompson,
Dudley, of Solano,	Lampson,	Townsend,
Eagon,	Lindow,	Van Dyke,
Edgerton,	McCallum,	Van Voorhies,
Estee,	McCoy,	Walker, of Marin,
Fawcett,	Miller,	Wilson, of Tehama,
Finney,	Mills,	Wilson, of 1st District,
Freeman,	Nelson,	Winans,
Freud,	O'Donnell,	Mr. President.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Keyes.

Two days leave of absence was granted Mr. Wilson, of Tehama.

Three days leave of absence was granted Messrs. Lampson and Edgerton.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

RESOLUTION—CHINESE IMMIGRATION.

MR. BEERSTECHER. Mr. President: I offer a resolution.

THE SECRETARY read:

WHEREAS, A bill for the restriction of Chinese immigration has passed both houses of Congress, and is now in the hands of the President of the United States for approval; therefore, in view of the vital importance of such restrictive measure to the citizens of this State, we, the delegates of the people in Constitutional Convention assembled, do hereby, on behalf of ourselves and our constituents, most respectfully ask the President of these United States to approve such bill.

MR. BEERSTECHER. Mr. President: This Convention has clearly and positively expressed its sentiment upon the subject of Chinese immigration in the Chinese article that was adopted some time ago. In consequence of the expression in that direction of this Convention, and in consequence of the memorial that was sent by this Convention to the President and the houses of Congress at Washington, and the memorials that were sent requesting similar memorials to be sent by the Governors of Oregon, and Nevada, and Washington Territory, and Arizona, Congress has seen fit to move in this matter, and the consequence has been the passage of a restrictive bill against Chinese immigration. One of the principal opponents of said bill was Senator Hamlin, of Maine. Said Senator caused the speech of Mr. Stuart, a member of this Convention, to be read in the Senate of the United States as expressive of the sentiment of this Convention, and the Senators favoring such measure, not knowing that Mr. Stuart was the only man that stood upon this floor defending the rights of the Chinese serf to drive out the free laborer of this country, were unable to make a statement to that effect, and the consequence is that the sentiments of Mr. Stuart, as expressed in his speech, to a certain extent, at least, are believed to be the sentiments of this Convention. Some of the papers have stated that the President may hesitate, yea, that he may even refuse to sign said bill, thus obliging the bill to go back to Congress to be passed over his veto, which, under the circumstances, would be an impossibility. In view of the vital importance of this matter, in view of the fact that certain sentiments were published as the sentiments of this Convention, which are not the sentiments of this Convention, I hope that the Convention will pass this resolution. I make the motion, sir, that the resolution be telegraphed at once to the President of the United States.

MR. MORELAND. This is in the nature of lobbying.

MR. BARTON. Mr. President: I desire to offer an amendment to the resolution.

THE SECRETARY read:

Resolved, That the Secretary of this Convention be hereby instructed to telegraph our delegation in Congress to point the President to the absence of delegate Stuart's name from the memorial to Congress on the Chinese question, which lately passed this body, as sufficient answer from the people of this State to the injustice done them by the use of that delegate's speech on the floor of the United States Senate, on the passage of the bill restricting Chinese immigration.

MR. BEERSTECHER. I accept the amendment with the consent of the house.

MR. LAINE. I hope you will not accept that.

MR. BEERSTECHER. Then I don't accept it.

MR. BARTON. Mr. President: Believing this is a matter of most vital importance to the people of this State, and in vindication of the honor, and integrity, and the standing of the members of this Convention, I propose to take no roundabout course in informing the representatives of the people of this State, and the President of the United States, of our desire and our demands; therefore I offer this amendment to the original resolution, hoping that the Convention will be prompt in its adoption and instruct the Secretary to telegraph the same immediately. The speech of Mr. Stuart—I am sorry that he is not in his seat this morning—is not only an insult to the dignity of this Convention, but an insult to the dignity of the people of this coast, he being the only member upon the floor of this Convention who has refused to sign the memorial forwarded to Congress by this body. Therefore I hope that the Convention will hasten to inform our representatives of the true condition of facts.

MR. FILCHER. Mr. President: The Senate has materially amended the bill as passed by the House, and it has to go back to the House and it may be eight or ten days before this bill reaches the President, or it may never get there.

MR. BEERSTECHER. The only object of this resolution is to show the President of the United States how we stand upon the subject, and it is perfectly proper.

MR. FILCHER. The object is to set the President and the Congress right upon the subject, and show that there is but one member of this Convention that holds the views of Mr. Stuart, and for that reason I think the substitute of Mr. Barton is the best.

MR. BARTON. By permission of the Convention, I will offer mine as a substitute for the original.

MR. BEERSTECHER. I object.

MR. McFARLAND. Mr. President: I make no objection to the passage of the resolution offered by the gentleman from San Francisco, Mr. Beerstecher, except the statement that the bill is not in the hands of the President, but I am opposed entirely to the amendment offered by Mr. Barton. I do not think it proper for this body to undertake to censure, as that does, the action of any member of this body. It is no insult to this body for any member to take a position opposite to a majority of this body. He had a perfect right to be opposed to it, and he had a perfect right to make a speech against it. The memorial has already gone from this body.

MR. BEERSTECHER. Mr. President: I think the objectionable part of the resolution could be removed by striking out the following words: "And is now in the hands of the President of the United States for approval." With the consent of the Convention I will strike out those words.

MR. McFARLAND. I would ask the gentleman if he has accepted the amendment.

MR. BEERSTECHER. No, sir.

MR. McFARLAND. I am opposed to the amendment. I believe that all of the members except two signed the memorial, which is now in the hands of Congress. It is a very strange thing that we are afraid that the influence of this entire body can be overcome by the speech of one gentleman. At the same time it was asserted by a member from this State that it did not represent the views of this Convention, and the fact was apparent there that all of this body except Mr. Stuart had signed the memorial. It seems to me that it is too much of a small thing for this body to undertake to allude to Mr. Stuart's name in any shape or form. He made a speech against it, and he had a right to do it.

MR. JONES. Mr. President: I see no occasion, under the circumstances of the case, for this Convention undertaking at the present time to instruct the President of the United States, or the Congress of the United States, in regard to this matter; and I think I do see a sort of impropriety in passing a resolution in regard to a matter which is going on well, and which will undoubtedly be consummated according to the wishes of this Convention. As to the amendment, the impropriety of that I hope will be obvious enough to the members of this Convention. It is true that if there was any danger that the interests of the State would suffer from a misapprehension of the views of the Convention on account of the expressions of one member, it might be that the necessity would require the Convention to adopt such a step as that contemplated, and to point out the fact that the one individual had taken an extreme view in opposition to the views of the majority; but I do not know any reason we have to suppose that Mr. Stuart's speech in this Convention is any more misunderstood in the Senate of the United States, or in Congress, than it was here. Sir, it would be a great impropriety to censure Mr. Stuart, or any other member, for a decorous expression of any sentiments in regard to Chinese, or suffrage, or anything else upon this floor. And aside from any censure, direct or implied, there is no misapprehension, so far as we know, on the part of the Senate or any branch of the Government produced by that speech, or by any other cause. On the contrary, this Convention has in a proper and dignified manner, at the right time, clearly and distinctly made known to the Congress and the President of the United States, the views and wishes—the most earnest wishes and desires—of the people of this State. That expression and others, I have no doubt, has had a wholesome influence. I do not understand that any material doubt exists in the minds of any, that the bill, if concurred in by the House, will receive the approval of the President of the United States. It has been understood that his sentiments have been expressed strongly and distinctly in that way. I know we have seen rumors that

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possibly there has been a change of sentiment, but we have no ground to presume anything of the kind. I think it will be more in accordance with the dignity and duty of this body to await further events before taking this action. I should much prefer that this matter should be laid upon the table, though I shall be ready to join with members of the Convention when there is shown any necessity for such action.

MR. CAPLES. Mr. President: I differ with the gentleman from Mariposa radically. It is true, as he asserts, that the sentiment of the people of California ought to be understood in Washington, but is it? Has misrepresentation done its work there? Now, I call the gentleman's attention to the positive fact that within the last week, and during the discussion of this subject in the Senate of the United States, the old false and infamous cry has been used, that the opposition to Chinese immigration was confined to the hoodlums of San Francisco. It is a preposterous outrage upon truth that such assertions should be made there; but they are made. We have got to take things as we find them in this world. The pro-Chinese advocates in Washington have resorted to and depended upon falsehood and misrepresentation from the first, and I believe that there are thousands and millions of people in the East to-day who believe that false and infamous charge, that only the hoodlums of San Francisco want the Chinamen driven out. It is true that this Convention has already sent a memorial, but there is sometimes great virtue in reiteration; and it seems to me that we have reached a stage in the proceeding in which it is right and proper to reiterate our sentiments in the most positive and emphatic manner. The only objection I have to the resolution of the gentleman from San Francisco, Mr. Beerstecher, is, that is not sweeping enough; it is not strong enough. I would fain hurl it back with all the force and vigor that the mother tongue is capable of. Let us say it again; let us continue to say it. This Convention, in sending a memorial signed by one hundred and forty-eight out of one hundred and fifty representative men, give an illustration of unanimity of sentiment unparalleled in political history.

MR. BARBOUR. Mr. President: I hope that the resolution will be adopted. I am in favor of a simple telegram to the President of the United States, earnestly urging him to sign the bill. That is all that we need, and I am surprised at the gentleman from Mariposa attempting to throw cold water on such a simple proposition as this. It is true we have sent memorials, but the President or Congress does not know what our opinion is on that particular bill. Why not assure them that we want that particular bill passed? There can be no objection to it. So far as that memorial is concerned it was signed before this bill was introduced. Now that we have something tangible, we want to assure them that that is the thing we want. A speech is delivered in this Convention—the only one that is quoted from in Congress at all—which, while it is only the assertion of an individual opinion, by one member, is easily tortured into an expression of the sentiment of a large portion of the people of the State, by a member who declares in express terms that Chinese immigration to this State is not detrimental. For that reason I hope that the resolution will be adopted, and that we will send the resolution directly to the President at headquarters.

MR. WATERS. Mr. President: I believe the Convention sufficiently understands the subject-matter, and I therefore move the previous question.

Messrs. Larkin, Lampson, Doyle, and Smith of Santa Clara also demanded the previous question, which was ordered by the Convention.

The amendment of Mr. Barton was rejected, and the original resolution of Mr. Beerstecher was unanimously adopted.

MR. BEERSTECHER. Mr. President: I move that the resolution be at once telegraphed to Washington.

The motion prevailed.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

THE CHAIR. The Convention will resume consideration of the article on City, County, and Township Organization. The question is on concurring in the recommendation of the Committee of the Whole to strike out section twenty-six. The Secretary will read the section.

THE SECRETARY read:

"SEC. 26. The Legislature shall not pass any local or special law in the cases following: Regulating the affairs of counties, cities, towns, townships, wards, city or county Boards of Education, school districts, or other political or municipal corporation or subdivision of the State; authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, or parks; relating to cemeteries, graveyards, or public grounds not of the State; locating or changing county seats; incorporating cities, towns, or villages, or changing their charters; creating offices, or prescribing the powers and duties of officers in counties, cities, towns, townships, or school districts; regulating the fees or extending the powers and duties of county or municipal officers; regulating the management and maintenance of public schools, the building or repairing of school or Court Houses, and raising of money for such purposes; extending the time for the assessment or collection of county, city, or other municipal taxes, or otherwise relieving any Assessor or Collector of county or city taxes from the due performance of the official duties, or their securities from liability; legalizing the unauthorized or invalid acts of any officer or agent of any county or municipality thereof; directing the payment of money out of the treasury, or by any officer of any county, city, or town, without the consent of such county, city, and town; directing the payment of money from out of the treasury, or by any officer of, or creating any liability against, a county, city, town, or any public or municipal corporation, without its consent."

MR. CAPLES. Mr. President: I merely desire to state that section twenty-six was upon my motion stricken out, because the whole subject matter had been provided for by the Committee of the Whole, in the article on legislative department. I believe that the action of the Committee of the Whole in striking out was proper in that respect. Of course, we do not desire to incorporate the same matter in this article on city, county and township organization as we have already incorporated in the article on legislative department.

The recommendation of the Committee of the Whole was concurred in.

CITY GOVERNMENTS.

THE CHAIR. The question is on the report of the Committee of the Whole on section nine, which was temporarily passed.

MR. SCHELL. Mr. President: It is quite evident that the situation of the Convention for the consideration of that section is worse than it was on Saturday. I therefore move that section nine be made the special order for to-morrow at two o'clock.

MR. LARKIN. Mr. President: This motion will carry the whole article over until to-morrow, and if the gentlemen from San Francisco desire to act upon this matter, if they desired to come here and do their duty they should have staid here. These very gentlemen that demand this postponement have kept us here five months. I am here now in order to help complete this work, and if they wanted to they certainly could forego the pleasure of visiting San Francisco. I am in favor of this Convention now completing this article to the best judgment of a majority of this Convention, and stand by that judgment. Let us not postpone this article for the convenience of any man. Each and every other we pass upon, the same argument will be offered. Let us proceed with our work in order, and if they are not here it is not our fault.

MR. WHITE. Mr. President: I trust, too, that this will not be put off. These gentlemen had full notice. The gentlemen from San Francisco had telegraphic notice that this was coming on this morning. The Convention, to accommodate them, put off this for one day. They paid no attention to it whatever. Every one of them read that in the papers yesterday, and yet they do not come. I think it is trifling with this Convention. Their conduct is an indignity to this Convention. I hope that the Convention will go right on and finish the article, and give them notice that they cannot trifle with us in this matter. They could have come up yesterday just as well as not, but they just expect that we will be trifled with here.

MR. GRACE. Mr. President: I understood that this was set for two o'clock, and if it was not it ought to have been. We had as many in this Convention on Saturday as we have now. I am in favor of getting along with the business of this Convention, and I want to get through, but I do not see any good in us taking up a thing that interests San Francisco directly when one half of the delegates from that city are absent. If we pass anything some one will give notice of a reconsideration, and when they come it will all be gone over again. So in order to facilitate business I think it is better to let this pass over and take up something else, and then this evening or to-morrow we can pass upon it.

MR. LARKIN. I will state to the gentleman that the Chairman of the committee will not be here until the day after to-morrow.

MR. GRACE. We will get all that we can get; there will certainly be some of them here. I know some gentlemen that I am satisfied will be here. It is generally understood that there would be all of the eight specially elected on the Non-Partisan ticket by the people. I would like to have these eminently respectable gentlemen here. I believe that it is in the interest of economy, and everything else, to let this pass over.

MR. WELLIN. Mr. President: I hope, as this is a matter of the greatest importance, involving an entire change in the system of government of all the large cities of our State, that, as we have delayed so far in this matter, we will offer another chance to those who are absent. I have no desire to put this matter over until to-morrow, but I hope it will be made the special order for two o'clock to-day, then, if they are not here, let the Convention go on with the work.

MR. LARKIN. The Chairman of the committee will probably not return before the middle of the week, but would be satisfied with the action of the Convention.

MR. WELLIN. This matter is of such importance that it ought not to be rushed through in a slim house; if it is it will offer an opportunity for the enemies of our work to oppose it.

MR. CAPLES. Mr. President: I am fain to admit that there is much force and truth in the observations of the gentlemen from El Dorado and Santa Cruz, but if it is trying to our patience, the fact nevertheless remains that we have barely a quorum here, and that this section nine is of vital importance. True, gentlemen should have been here, but they are not here. Is it wise in us, with a bare quorum here, to rush this matter through? I beg gentlemen to reflect upon the magnitude and importance of section nine, and ask themselves whether it is wise in us, because other gentlemen have not done their duty, to put this matter through? I admit that it requires a very large degree of patience for us to sit here, day after day, and be delayed in our action by the absence of gentlemen who are neglecting or refusing to perform a solemn duty. I submit that in this case it is necessary, because, upon our action in regard to this section nine, may depend the fate of the Constitution that we are making. If it was a trifling matter, if it was a matter less vital, I should concur with the gentlemen in opposing all procrastination, but this is no trifling matter, it is a matter of the very first magnitude, that may involve the success of the work in which we are engaged. Now, the time would not be entirely lost; we can occupy ourselves upon minor matters. Our action upon these minor matters will undoubtedly give satisfaction to the absentees and to the country, but I submit that it is not wise for us to precipitate action now upon a measure of such magnitude as section nine.

MR. WYATT. I move the previous question.

MR. LEWIS. I ask to make a personal explanation.

MR. GRACE. I ask the gentleman to withdraw the motion for the previous question. I believe the gentleman ought to have a chance to make his explanation, he has not sacrificed much time.

MR. WYATT. I withdraw it.

MR. LEWIS. Mr. President: I simply wish to state that in convers-

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ing with Mr. Winans, he asked a postponement only until to-day at two o'clock, and I am in hopes that the gentleman who made the motion will so amend it. In conversing with him he said, that if it went over until this afternoon, it could be properly considered. They all look upon it as a matter of the greatest importance. I certainly hope it will go over until this afternoon.

MR. LARKIN. Wouldn't it take the whole article?

MR. WEBSTER. I move to amend to to-day at two o'clock.

MR. LAINE. I would ask if that simple section will carry the balance of the article?

THE CHAIR. The article is on engrossment.

MR. LAINE. There are some amendments to other sections.

THE CHAIR. Under our procedure, the question would be upon the engrossment of the article.

MR. LAINE. The sections are open to amendments.

MR. SCHELL. If that be the case, I would temporarily withdraw the motion so that amendments may be offered to other sections.

MR. LAINE. I think that would be better.

THE CHAIR. The gentleman will have leave to withdraw his motion. If there be no objection, section nine will be temporarily passed.

MR. LAINE. Mr. President: I send up an amendment to section one.

THE SECRETARY read:

"Amend section one by striking out all after the word 'counties,' in the first line, and insert the following: 'Cities and counties, cities, towns, school districts, and supervisor districts. And other municipal subdivisions of the various counties are hereby recognized as legal subdivisions of the State, and shall so remain until changed, modified, or abolished by law.'"

MR. LAINE. Mr. President: If the Convention will examine this first section, it will be observed that it is limited to counties. Now, there is too much or too little stated there. We have got various other subdivisions of the State.

MR. TURNER. Mr. President: I rise to a point of order. It has been a uniform rule here, that no amendments have been allowed to an article until all the amendments proposed by the Committee of the Whole had been disposed of.

THE CHAIR. The point of order is well taken. The section is not open to amendment at all.

MR. SCHELL. Then I renew my motion to postpone section nine, until to-morrow at two o'clock. If any gentleman desires to move an amendment let him do so, but I desire to more fully state my reasons. It is not as the gentleman from El Dorado intimates, that this motion is for the purpose of accommodating any member of this Convention. I do not make it, sir, to meet the convenience of any man. I do it, because when I look around me I see a great many of these seats vacant. The reasons for these members remaining away I do not know. I know they are away frequently on Saturday and Monday.

MR. WYATT. I rise to a point of order. The gentleman has spoken once on this question.

THE CHAIR. He merely made his motion.

MR. SCHELL. I will not detain the Convention long. I think, sir, that if we make this the special order for two o'clock, we will be in just the same position that we were Saturday and are at this hour. We know that on Tuesdays, as a general thing, we have a full Convention, and that is the reason why I have made the motion as I have. I am as anxious to get through with the business as any gentleman here, or as any man possibly can be, and that is another reason why I have made this motion. I believe that by doing so—by settling this question with a full Convention—we shall settle it so that it will stay settled, and will not require any future action by this body. If we act upon it to-day, why, sir, the probability is that a motion will be made to reconsider the action of the Convention whatever it may be, and then it will come up again for discussion. I believe that it will save time to make it the special order for Tuesday at two o'clock.

MR. VACQUEREL. Mr. President: I second the motion of Mr. Schell. The more haste the less speed has been the rule in this Convention on Mondays. Whenever an important thing has passed on Monday, it has taken all day Tuesday and sometimes Wednesday to reconsider it. I think by postponing it until to-morrow we will save time. I hope the motion will prevail.

MR. WICKES. Mr. President: I trust that the motion will not prevail. I believe this Convention saves time by going on with its work systematically. I do not believe that we should defer to those gentlemen who are absent every week running backward and forward home. If they were very much interested in the section they would be here in their seats.

The motion prevailed, on a division, by a vote of 51 ayes to 30 noes.

MR. TULLY. Mr. President: I move that the Convention adjourn until two o'clock P. M.

Lost.

MISCELLANEOUS SUBJECTS.

MR. LARKIN. Mr. President: We can take up the report of the Committee on Miscellaneous Subjects and consider it.

MR. CROSS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Murphy in the chair, for the purpose of considering the report of the Committee on Miscellaneous Subjects. I will say that the Chairman of the committee is here, and it is with his knowledge and consent that the motion is made.

MR. WHITE. Mr. President: I hope that motion will not prevail. We are not prepared to take up that this morning. There are a great many very important propositions to come up on that. I hope that it will not be sprung on us. As to the report of the committee, I think it is very defective. It does not cover many things that ought to be attended to in that report. I hope that the Convention will go on, will go right on with its business and take the next thing on the general file.

MR. MARTIN, of Alameda. Mr. President: The next thing would be the article on education. I hope that the consideration of that article will not be taken up this morning, for the reason that the Chairman of the committee, Mr. Winans, is confined to his bed from sickness. I have just received a note from him, saying that he would not be able to be here this morning. I hope that some other article on the file will be taken up.

MR. WELLIN. Mr. President: I hope that we will not this morning go into the report of the Committee on Miscellaneous Subjects. There are some persons deeply interested and they are not here. I would just as lief go on with the regular order of business as this.

THE CHAIR. The question is on the motion to go into Committee of the Whole on the report of the Committee on Miscellaneous Subjects.

On a division, the vote stood, 42 ayes to 34 noes.

THE CHAIR. No quorum voting.

On a division, the motion prevailed, by a vote of 43 ayes to 37 noes.

IN COMMITTEE OF THE WHOLE.

THE CHAIR. The Secretary will read the article.

THE SECRETARY read:

ARTICLE —.

SECTION 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each House, may provide, submitting the question of change to the people.

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

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

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

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

SEC. 4. All officers or Commissioners, whose election or appointment is not provided for by this Constitution, and all officers or Commissioners, whose office or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 7. No contract of marriage shall be invalidated for want of conformity to the requirements of any religious sect. But no marriage hereafter contracted in this State shall be valid between the parties thereto, unless a public record thereof be made in such manner as may be provided by law.

SEC. 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards, by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of said liens.

SEC. 16. The amount named in either a fire or marine insurance policy shall be deemed to be the true value of the property insured for insurance purposes.

SEC. 17. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold their position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SEC. 18. No persons other than citizens, or those who have declared their intentions to become such, shall hereafter acquire or own, either by purchase or otherwise, real property in this State contrary to this provision—such property shall escheat to the State; nor shall any lands

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in this State be held in trust for any lien; but the creation of any trust in lands for the benefit of an alien shall at once escheat the land to the State.

THE CHAIR. The Secretary will read section one.

SEAT OF GOVERNMENT.

THE SECRETARY read:

"SECTION 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding, unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each house, may provide, submitting the question of change to the people."

MR. WICKES. Mr. Chairman: I move to strike out all after the word "remain," in line two.

MR. CROSS. I second the motion.

MR. WICKES. Mr. Chairman: This amendment fixes Sacramento as the seat of government for the State. I think that is a matter that should be fixed in the Constitution. It should not be left to the caprice of demagogues and politicians. We were cursed by such fickleness in the earlier history of our State. The State, too, has spent a great deal of money here in Sacramento, and has acquired a valuable property here. On the question of economy this should be settled in the Constitution, and also I think it would be a fitting tribute to the indomitable people of Sacramento, who, preëminently, I will say, represent the energy, and the enterprise, and the industry, and the public spirit of California.

MR. BARBOUR. Suppose Sacramento washes away.

MR. WICKES. There is no danger of Sacramento washing away. This building never will be washed away.

MR. AYERS. Mr. Chairman: I do not see any necessity for the amendment. I think that the section as it is now is conservative enough. It requires a two-third vote of the Legislature to submit the question. I think that is strong enough to prevent anything like rash action with reference to the removal of the capital. I have no feeling on this subject, but still I believe we should leave some sort of flexibility to this matter, while at the same time we should be conservative. There is no necessity for the amendment.

MR. BROWN. Mr. Chairman: It appears to me that there is no occasion whatever for the amendment. Now I do not think there is any antagonistic feeling against Sacramento as the State capital, but to attempt to bind the future entirely to this place I think would be wrong, and when the matter is provided for here that by a certain action of the Legislature the matter shall be submitted to a vote of the people, it seems to me that that should be sufficient. I therefore agree entirely with the gentleman from Los Angeles, that this amendment is unnecessary. I think, in fact, that it might work a future hardship and might almost deprive us from having any capital at all, because we do not know what may be the result with regard to any city in this State. We do not know what calamities may befall any part of the country. We may have war or invasion, and we could not have any capital anywhere else.

MR. BIGGS. Mr. Chairman: I would simply say that we have been to a great deal of expense in the erection of this building, and I know something about it. I was Chairman of the Committee on Public Buildings and Grounds, and we made a thorough investigation. We have got a building here that is a credit to the State, and one that every citizen of the State should be proud of.

MR. LARKIN. Mr. Chairman: I object to the amendment. We could move the capital easier than we can keep the members here. There have been constant adjournments of the Legislature to allow the members to go to San Francisco. I think the amendment should not pass.

The amendment was rejected.

MR. HERRINGTON. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend section one as follows: Strike out the words 'by a two-thirds vote of each house,' in line six; also, strike out all of line seven."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: Of course it is generally understood that there is very much importance attached to this capital question. I know that every time this question has come before this Convention or before the Committee of the Whole, that every gentleman who has the impudence to take a position against the permanent location of the capital at Sacramento, is charged as being unfriendly to the citizens of Sacramento; that he is casting aspersions upon the character and the fame and name of the people inhabiting the city of Sacramento. It is not true. It is not just to those who take a position antagonistic to the permanent location of the State government at Sacramento. It is well known and it cannot be denied, that this is not a healthy location. It is a boneyard for many of the best representatives that the people ever sent to this place. It is a place of interment for the distinguished brains of the State, it is true, and I do not know but what some of them have sought to obtain position for the very purpose that their bodies might be laid in state among the quiet weeping willows somewhere upon Burns' Slough.

MR. BIGGS. Will the gentleman allow me to ask him a question?

MR. HERRINGTON. I do not believe that this question needs any illustration. I shall cover the whole ground in this speech of mine. I do not intend to leave anything out. I do not want to be disturbed. I am now before this Committee, and I propose to have my say just a little while. I know that I was denounced on one occasion, and it was said I had been slighted by some of the distinguished and beautiful females of the City of Sacramento. Well, I do not deny that I have not met with many of that distinguished class since I have been here. I have been busy. I have not had time to pay my court or addresses to any of that distinguished class. I know that there are some persons who find time for little else than that perhaps, but it has been my fortune to be fully employed, and my time has been fully occupied with the duties of the Convention since I have been here. However pleasant such an occupation may be to other distinguished gentlemen, however pleasant it may have been for me, I know that so far as I have been concerned my time has been wholly occupied, without reference to my business employment, in the business of this Convention. Now, Mr. President, I know that no better compliment can be paid to the people of Sacramento than to say of them that they have the indomitable energy and perseverance, and the will, to live without the capital of the State, or seat of government, located here. Now, I am not saying anything at all against the good character and the indomitable perseverance, and the great success that has attended the people of Sacramento. But I do submit that there are some circumstances which are against keeping the capital here in Sacramento. The chief objection is the unhealthy location. It is true that it is healthy for those who have become acclimated here, but persons coming here from other localities do not find that genial climate which is required to keep up the increased energy of their brains, or the vigor of the physical constitution, so as to enable them to do the best work for the people of the State of California. Finding that to be the case, I submit in all conscience, there should be some other location in the State of California found that will answer a better purpose for the seat of government than the City of Sacramento. This is saying nothing against the people of Sacramento, or their moral qualities, but going directly to the point which should be considered as the sole qualification for the location of the capital above all others, when you have taken into account that other question of a central position. Now, I do not object to it in consequence of its particular location with regard to other portions of the State. I think it is centrally enough located, and it is easy enough of access, but the miasmatic influences of its atmosphere are perpectly insupportable.

MR. INMAN. Mr. Chairman: I move to strike out all after the word "law," in line two, and add the following: "Provided, however, that two thirds of all the members elected to each house of the Legislature shall concur in the passage of such law." That is the present Constitution. In looking over this section one, I see it requires a vote of the people. Now, I do not suppose that there are a dozen people in the State who want the capital removed, unless circumstances compel them to do it, but I have made up my mind that Sacramento is doomed, at some future time, to inundation. Should these rivers break in it will fill up to a level with the levees, and if you have to submit it to the people it will take two or three years. I object to this section as it now stands, not that I want the capital removed, I have nothing against Sacramento in the least, but I want it so that the people can change it if necessary.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I would like to ask my friend from Santa Clara, who spoke to his motion, this question. I understood him to remark that this was a boneyard. I do not know whether he meant this body or meant the City of Sacramento in general. If he meant the latter, I desire simply to remark that I understand that Sacramento, so far as its health statistics go, compares favorably with any other locality in the State; that, I think, disposes of the whole question, so far as the sanitary condition and the climate are concerned.

MR. TULLY. The reason is, that when they get rich they go to San Francisco to die.

MR. SCHELL. I believe this section is right. I believe that whenever we seek to tear up the foundations of the State capital, that it should be at the instance of two thirds of the Legislature; at least two thirds of the Legislature ought to vote in favor of submitting it to the people first, and then the people may, by a majority vote remove it. It is not an ordinary question that ought to be submitted to merely a majority of the Legislature. When it comes to incurring so great an expense as would be involved in the removal of the State capital, I think something more should be demanded than a mere majority vote. I hope that the amendment will be promptly voted down.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I see no occasion to change my position, that the section should remain as it is. Notwithstanding the criticism which a member of the Sacramento delegation made on the City of Los Angeles, I feel that I can do justice to Sacramento, and not for the reason, either, that might be implied by the speech of the gentleman from Santa Clara, for I have not had the satisfaction of capering nimbly in any lady's chamber to the lascivious pleasings of the lute; but simply, as I look upon it, as an economical question, and one which the State at present takes great interest in. The capital is located here now, and should not be changed without some great and imperative cause. I have no feeling in this matter, for the reason, perhaps, that I have but a very slight interest in it. This will be your capital at this end of the State, but in the future years, when that grand and glorious new State of South California will rise [laughter], then there will be no competitor, in my opinion, for the capital of that State. We will leave you with regret, we shall always remember you with kindness, but we will also remember that whilst we have been attached to you, you have forgotten to give us as fair a representation as you did to other portions of the State.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I have no objection to the capital remaining permanently at Sacramento, so far as I am concerned. It is centrally located, and so far as its being the graveyard of the State, I

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know nothing about it. I do not expect to be buried here—for the present, at least. In fact, I judge it to be rather a healthy place, where the Public Administrator has to employ a "killer" to make a living. [Laughter.] I am in favor of permanence as much as possible. I am also in favor of permanence in the Constitution. I am in favor of making no unnecessary changes in the Constitution; and, therefore, I am in favor of the amendment of Mr. Inman, which leaves the Constitution in this regard just the same as it has always been. The capital can be changed at any time by a majority of two thirds of both branches of the Legislature. I do not know as I have a correct view as to what constitutes the State capital. My view is, that it is where the Legislature meets, and where the Governor and State officers have their offices. If that is what constitutes the State capital, contingencies may arise, and have arisen, which compelled the Legislature to remove the State capital temporarily. One Winter, in consequence of a flood, the Legislature had to move temporarily to San Francisco. Now, if this section offered by the Committee on Miscellaneous Subjects is adopted, I am not sure—although I will not say I am correct in that—but that kind of a change would necessitate a vote of the people of the State at large before the Legislature could move down to San Francisco in case of a flood. I do not expect Sacramento to be washed out permanently, but the Legislature might have to move temporarily. I would ask if that is not moving the State capital? I am in favor of Mr. Inman's amendment.

MR. LAINE. Mr. Chairman: I hope that the last amendment—the one moved by Mr. Inman—will not be adopted. It is very dangerous indeed, and has subjected us in times past to very great injury. You will remember that this is the old Constitution. When the State capital was moved temporarily from the City of San José to the City of Vallejo, the Supreme Court decided that it took two thirds to put it on wheels, but a majority could keep it on wheels. Having once moved it, a majority could afterwards keep moving it. That is the decision of the Supreme Court of this State upon this identical section; so that the amendment of Mr. Inman is much worse than the one offered by the committee, or the one offered by the gentleman from Santa Clara.

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. Inman.

The amendment to the amendment was rejected.

MR. CAPLES. Mr. Chairman: I am very sorry to see the spirit that is being manifested here. These amendments are evidently conceived in a spirit of captious malice. Every gentleman upon this floor must know, and does know, that this agitation can amount to nothing practical. As long as California remains territorially as she is now, Sacramento is and will be the capital; but if the gentleman from Los Angeles secedes from the State——

MR. AYERS. I object to the word secession. The northern portion may secede from the southern——

MR. CAPLES. The gentleman says that he does not propose to secede, but that the State may secede from Los Angeles. Now, that reminds me of a remark I have frequently heard here, that however absurd it may appear, Los Angeles was California.

MR. AYERS. I would ask the gentleman if Los Angeles was not the capital of this State before Sacramento was thought of?

MR. CAPLES. True enough; so was Marblehead quite a town before Chicago was ever thought of. When the State shall secede from Los Angeles, then this will become a live and practical question, and my friend from Santa Clara may then, with some propriety and common sense, come in here with a proposition like his; but until that consummation the question is a dead question; it is a malicious question; it is a question without any practical object or aim, except the gratification of personal feeling; and I protest against the manifestation of this feeling here, and the waste of time to the detriment of public business.

MR. INMAN. I deny having any feeling in the matter whatever.

MR. CAPLES. I did not refer to you. I spoke of the gentleman from Santa Clara.

MR. HERRINGTON. Mr. Chairman: I want the gentleman's words taken down.

MR. CAPLES. I am willing to have them go down.

MR. HERRINGTON. His remarks are——

MR. CAPLES. If the gentleman has any question to ask, all right, but I claim that I have the floor and not he. He desires that the words should be taken down. I have said that the spirit was a captious spirit, and that it was dictated by personal feeling and animosity, and if the gentleman has any objection to make to the language, he is welcome to have it taken down. I reiterate that the feeling is a captious one, and that there is no demand for it, and no practical good can come out of the agitation of this question. Now, I am perfectly satisfied and willing that the section should be maintained as it comes from the committee; but I would not care if there was not a word put into the Constitution on the subject.

MR. WHITE. Mr. Chairman: I desire to say that I am going to vote for the amendment of the gentleman from Santa Clara, and that I have no feeling of malice, and if there is any feeling, except by the gentleman himself, I do not know it. We desire merely to give the power to the people to move the capital at any time they wish. We do not intend to tie down the Legislature to a two-third vote if we can help it. I trust that the amendment will be adopted. I believe in the will of the people being obeyed in this matter.

MR. TINNIN. Mr. Chairman: I hope that this amendment will not be adopted. I think more regard should be paid for the public interest in the matter of economy than to allow a mere capricious majority of the Legislature to change the capital of the State. The capital has been located here at immense expense. It is true, I think, that it was a great mistake in placing it here, but it is here, and it has cost the people of the State a great deal of money, and it should not be removed unless some great calamity or misfortune befalls this city which necessitates that removal.

MR. TULLY. Mr. Chairman: I hope that the amendment will not prevail, but that we will leave it as it comes from the committee. There has been a good deal said here in reference to lobbying, and I don't know any section that has been adopted, or anything that this Convention could do to encourage lobbying more than to adopt this amendment. There would be a fight every time the Legislature met for a majority to move this capital, perhaps down to Los Angeles, or some other prominent place. I would like to have it at Gilroy if it is to go.

MR. AYERS. How would Milpitas suit you?

MR. TULLY. Yes. We could have a custom house on the bay, and the petrified Indian as Collector. But, sir, I think we had better leave it as it is. The gentleman from Santa Clara perhaps is in for some State office, and that is the reason why he wants to look into the health of the locality. He says he has not had time to visit the ladies; that he has been laboring here for the good of the people. Now, I do not wish to make any invidious remarks, because I like the gentleman, but if you take his personal appearance I do not think he would amount to much among the ladies. [Laughter.] Look at him! What kind of a figure do you suppose he would cut among the ladies? He says he don't love the ladies. Now, a man that don't love the ladies generally don't love his country. I never knew a man that did not love the ladies that ever did much for his country. [Laughter.] I trust that the people of Sacramento, particularly the ladies, will pardon my friend for criticising their beautiful city as a boneyard; and that there is no society here that a man can live in; and that by the time a man gets acclimated here he dies. I don't want them to lay anything up against him, and when he is elevated to the Supreme bench——

MR. HERRINGTON. I want his words taken down.

MR. TULLY. When he is elevated to the Supreme bench and comes up here, I hope my friend McFarland will treat him kindly, and when the Bar Association gives good dinners you will invite him out. However, I should like to see him improve in his personal appearance. [Laughter.]

THE CHAIR. The question is on the adoption of the amendment.

The amendment was rejected.

THE CHAIR. The question is on the adoption of section one.

Adopted.

THE CHAIR. The Secretary will read section two.

DUELLING.

THE SECRETARY read:

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

MR. VACQUEREL. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Strike out in the second line after the word 'duel,' the following: 'with deadly weapons;' also in line three, where such words occur."

MR. VACQUEREL. Mr. Chairman: I do not see the sense of that section. I would like to know what is a deadly weapon. Is it a Krupp gun? Is it a broom-stick? Or is it a needle? Now, according to the best authorities a duel is a combat between two persons, to decide some private contest, or to establish a point of honor. You can fight with bullets, with the revolver, as well as with your fists. A man's fist is as much a deadly weapon as a revolver. For instance, if the Chairman was to strike somebody in the head with his fist, I think it would be very nearly a deadly weapon. According to this section we will prove that they have used no deadly weapon. If we are going to abolish the duello, let us abolish it altogether, or specify the kinds of weapons. I hope the amendment will prevail.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I am opposed to the amendment of the gentleman, and in favor of striking out the section; and consequently I shall move to strike out the section. The section was passed at the time of a certain great excitement in this State. It is due to this Convention, and due to the State of California, that the leading man of this Convention, and I believe the ablest man upon this floor, the most independent, free from any rings, or cliques, or restraint, that we should not place this in the Constitution as a stain upon his name. The men that fight duels are not thieves; they are not men who sell out their constituents; they are not men who stoop so low as to buy their way to the State Legislature; yet the men who do these things are not disfranchised. You allow the most corrupt man to hold office; but you wish to say, that because an honorable man is compelled to defend his honor and engage in a duel that he cannot hold the office of Constable, or Justice of the Peace, or any other office in this State. I am no apologist for duels, but I believe the people are capable of selecting the men that should represent them, from the highest to the lowest position in this State. A man should not be disfranchised because he defends his honor, or the honor of his wife and family, under excitement. I am in favor of striking it out.

MR. SCHELL. This says, "after the adoption of this Constitution."

MR. LARKIN. There may be such a thing then. I would not have a provision in the Constitution to prohibit a man from defending his honor, or the honor of his family—the honor of his wife, mother, or sister. I am in favor of striking out the section, and leaving the people to decide whether they will elect a man under those circumstances or not.

MR. BARBOUR. Mr. Chairman: I am in favor of the amendment proposed by my colleague from San Francisco, Mr. Vacquerel. It is a matter of extreme difficulty always to say what is a deadly weapon. The language is unnecessary. Duel has a certain definition and mean-

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ing. Now I remember the case of the Frenchman who was challenged by an Englishman. Under the code the party challenged is entitled to select the weapons. The Frenchman chose asafœtida, in a close room, and he cleaned the Englishman out, because he liked asafœtida and it killed the Englishman and never hurt the Frenchman. I am in favor of striking out the language "deadly weapons," because asafœtida was deadly to the Englishman and did not hurt the Frenchman.

MR. BROWN. Mr. Chairman: It strikes me that this would not have the desired effect, provided "deadly weapons" is stricken out. For instance, it is necessary for us to study as to what the word "duel" means. It is supposed to mean a combat between two. Then under this section, two men who engaged in a fist-fight would be disfranchised, though we do not consider that is a very great crime. I cannot see the propriety at all of striking these words out. A jury can always decide what is a deadly weapon, and we all know it. It appears to me that it would only be weakening the section down until it amounts to nothing, or it would mean too much—that any fight whatever would deprive a man of certain privileges.

MR. WHITE. Mr. Chairman: I am perfectly astonished at the gentleman from El Dorado. We all know that this was intended to destroy a most baleful practice which had run to an extent that was perfectly outrageous at the time of the adoption of the Constitution in eighteen hundred and forty-nine. It was not pointed at any particular case. It has been adopted in several of the States, and the whole sentiment of the people is against the idea of dueling. It is the most absurd idea in the world. We are nearly rid of the practice, and this provision in the Constitution tends to break it up. When a man is insulted he has the right now, if the law won't do it, to inflict punishment himself, and if a jury of his country sustain him in that it is all right. But the duel often makes the innocent suffer and lets the rascal escape. I did not suppose there was a man in the State of California that would raise his voice in favor of dueling at this date.

MR. AYRES. Mr. Chairman: I see no need to amend this section in the manner proposed, and I must say that I am astonished at the lack of historical information shown by the gentleman from El Dorado, when he intimates that this section was adopted for the purpose of meeting a memorable duel which occurred in this State. I assert that it was an original section, adopted at Monterey. All the great duels in this State after the organization of this State government—and there were many fierce and some revolting ones—occurred in defiance of the institution of the Constitution. I do not see any necessity for making the change.

The amendment was rejected.

MR. LAVIGNE. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section two by adding, after the word 'offending,' in line five, the following: 'or shall be guilty of assault with deadly weapons.'"

MR. LAVIGNE. Mr. Chairman: I cannot see a good reason why a man who attempts to kill somebody should not suffer the same penalty as the one who fights a duel or accepts a challenge. The man who, being insulted in his honor, and who sends a challenge to another, or accepts one, is undoubtedly a gentleman; he proves to be brave and risks his life to wash out an insult, or give satisfaction to his adversary. The other is a coward. He attacks a man often with premeditation and in a cowardly and contemptible manner. There is no comparison between the two. The first one is entitled to the respect of all honest men; the other is a base assassin. When he is not it is because circumstances did not allow him to carry out his purpose. It seems to me that if the former deserves to be punished the latter should also be deprived of his privilege of citizenship. I hope that the amendment will be adopted.

The amendment was rejected.

MR. MORSE. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend by inserting, in line five, after the word 'offending,' as follows: 'or engage in a prize fight.'"

The question was put on the amendment and no quorum voted.

MR. LARKIN. Mr. Chairman: I move to strike out the section, and upon that I call for the ayes and noes.

THE CHAIRMAN. The ayes and noes cannot be called in Committee of the Whole. The Secretary will call the roll for the purpose of ascertaining whether there is a quorum.

The roll was called, and ninety-one members found present.

The motion to strike out the section was lost, on a division, by a vote of 21 ayes to 69 noes.

MR. AYERS. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend, by inserting after the amendment of Dr. Morse: 'or be voluntarily present at any lascivious or barbarous exhibition.'"

MR. CROSS. I object to that, as not being purely local to that State of South California, which is not yet formed.

The amendment to the amendment was rejected.

The amendment was adopted, on a division, by a vote of 52 ayes to 31 noes.

MR. CROSS. I move to amend, by inserting the words, "or bet on a horserace."

THE CHAIR. The amendment is out of order.

MR. WATERS. I move the previous question.

Seconded by Messrs. Huestis, Hunter, Brown, and Barton.

The main question was ordered.

THE CHAIR. That carries the article over.

MR. CROSS. Then we have not considered the article at all. I think we had better all have been at home to-day. Mr. Chairman, I move that the committee rise, report progress, and ask leave to sit again.

MR. LARKIN. Does the Chair rule that the article——

THE CHAIR. The Chair was mistaken. I did not know that an amendment had been made to the rules.

MR. BLACKMER. I desire to call the attention of the Chair to one fact. I noticed that in passing the first section the Chair called for a vote upon the first section. The ruling of the President of the Convention has been that if there were no further amendments to a section it was passed, and we took no vote upon the section, so that there is no vote except upon the amendments. I do not know whether the Chair decides the rule in that way, while he is occupying the chair, or not.

MR. MCFARLAND. I suppose that the only effect of this is to pass to the next section.

THE CHAIR. The Secretary will read section three.

OFFICIAL OATH.

THE SECRETARY read:

"SEC. 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: 'I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability.' And no other oath, declaration, or test, shall be required as a qualification for any office or public trust."

MR. MCFARLAND. Mr. Chairman: I have an amendment to offer to section three.

THE SECRETARY read:

"Amend section three by adding thereto as follows: 'and no officer of this State, or of any municipal corporation thereof, shall be required to give any official bond, except in cases of officers who, by virtue of their offices, have custody of private property.'"

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: This is a proposition which I introduced in the early part of the session of this Convention. It is appropriate to the article on miscellaneous subjects. Since that time, sir, I have had conversations about that matter with a great many gentlemen for whose judgment I have the greatest respect, and I find that nearly every one that I have conversed with is in favor of it. I am opposed to the practice of requiring a bond from any public officer elected by the people, except in the case of such as Sheriff, or Public Administrator, and one or two others, who, by virtue of their office, have private property in their charge. It would be wrong to compel any private individual to submit his property to an officer without security. Now, sir, when the public selects a public officer, I say that it is wrong in principle to compel him to bring in two, or three, or half a dozen of his friends to be responsible to the whole community. I believe it is wrong to place a public officer in the humiliating position of being a beggar among his friends. Everybody knows that he does not like to do it. Every man knows that if a man goes on an official bond it is because he does not like to refuse a friend; and it has got so now, that men qualified to go on bonds refuse. Now, suppose that an official bond has three or four signatures; suppose it occurs that through fraud or mismanagement the money is lost; who should lose that? Is it not more equitable, is it not more just, that the whole community should lose it, than that one or two men that happen to go upon the bond should? Now, it is no answer to this proposition to say that a man need not go upon an official bond, because somebody must do it, or else the business of the public ceases. It is not like asking a man to go on a promissory note. That is a private arrangement. The business of the State cannot go on unless somebody goes on these bonds, and they are forced to do it. Now, I would like to know what justice there is in this proposition? Here is a man indorsed by the people; he has a majority of the popular vote; the people themselves chose him for their representative in some office in which money is involved. The community have said that he is the right man. Now, then, according to the general doctrine, he has got to get two or three of his friends to go on his bond. If the people turn out to be wrong in their judgment; if they have made a mistake as well as the friends who go on his bonds, then the two or three friends have to suffer to the ruin of their fortune, and the people lose nothing. Sometimes it all falls upon one or two, or even upon one man, who has to pay that bond to the deprivation of his own family. I say it is wrong in principle.

Again, the man who holds a responsible office is put under obligations to those who go upon his bond, and that is wrong. If that position is a responsible one, the men who go upon his bonds have him to a great extent in their power. He has got to put in the deputies they want. He has got to be governed to a great extent by them; and then, after all, while you depend upon these official bonds, in nine cases out of ten you fail anyway. We all know how hard it is to collect on a bond. The sympathy of everybody is in favor of the bondsmen, and if there is any excuse for the Court or the jury to let the bondsmen get off, they will do it, because they see the intolerable injustice of compelling men to pay who did not know any more about it than the whole community; who have only made the same mistake that the whole community has made.

And, again, sir, there is another reason for the adoption of this amendment, and I think it is a most important one: The tendency would be to compel every man in the community, particularly the taxpayers in a community, to take some part in the selection of our public officers. I have had something to do with politics, and know that the best men in the community hardly ever take any interest in the selection of public officers. They could see to it that good men are put up, but they will not do it. They say: "Oh, well, if this man is elected County Treasurer, and anything goes wrong, his bondsmen will have to pay for it." Now, I want that sort of men to exercise their influence in public affairs. I want them to understand that if they allow other men to run politics and anything happens to the public, that they have got to

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pay it themselves; that they are not to depend upon two or three friends of this public officer who have gone on his bond. In that respect it would compel the taxpaying portion of the community to take a part in politics and give it greater dignity, and to see that a better class of men were put in office. If it was understood that the man who was elected Tax Collector or Treasurer in any city or county had to stand upon his personal character, and if it turned out that he was dishonest, the taxpaying community would have to foot the loss; they would see to it that men of character and standing and tried worth would be nominated for these offices by all political parties, and then no matter which party carried the election, good men would be there. I believe there would not be as much loss on the public from bad officers as there is now; I believe that it would be much less, and that we would have a better class of men in these offices that control money. I ask any gentleman on this floor if he thinks it is right that one man should pay out of his private fortune a large amount of money, which is lost through the incompetency or dishonesty of an official selected by the people themselves? I do not believe any man thinks it is right.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I do not agree with the gentleman from Sacramento as to his views in relation to this matter. Men are placed in nomination before the people by their friends. Their friends advocate their claims, and these same friends after presenting these men before the Convention and before the people, advocating their election, should be willing to give security to that people that they will not rob them. Nine men out of ten in every community are not personally acquainted with the officers that are nominated.

MR. MCFARLAND. Is it not a common thing for a man to go to his political opponents for his bond; to men who have not voted for him?

MR. LARKIN. Certainly. But who would not be willing to give security for that man, for every dollar, for every cent, that he might rob the people of. There must be some responsibility. An irresponsible party might be the most popular candidate and you would have the community responsible for his acts. That man was placed in nomination by friends who urged his election, who secured his nomination, and who should go upon his bonds. These are the men, and not the whole people, who should be security for that man. So far as the question of bonds is concerned, in my own experience I have never seen a worthy man but what could get plenty of bondsmen. I have known men that could not get bonds—a number of them; but this principle that the community should take the responsibility is all wrong. There must be responsibility, and that responsibility must rest with the men that placed him before the people and demanded his election. The idea of getting better men; that the people will watch more; care more who they vote for. I look upon the thing as preposterous.

MR. MARTIN, of Santa Cruz. Mr. Chairman: I am in favor of the amendment of the gentleman from Sacramento. I know that in my own county a few public spirited men have had to take all the risk, and in the adjoining county of Monterey there have been several gentlemen ruined by going on bonds. I believe when the people elect a man they should be responsible for him.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Sacramento.

The amendment was rejected.

MR. WELLIN. Mr. Chairman: I desire to offer a substitute.

THE SECRETARY read:

"SEC. —. Members of the Legislature, and all officers, judicial and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation: 'I, ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of California, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State Convention or Legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of this Constitution of the State of California; and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office; and that I do not now nor never will employ any Asiatic, Mongolian, or Chinaman, nor be in any manner interested in the profits of his labor; and that I will use all my endeavors as a citizen and an officer, to prevent the further importation of any Asiatic, Mongolian, or Chinaman; and further, that I will endeavor by every Constitutional or legal means, to remove from the State all those who are now here; and I do further swear (or affirm) that I have paid no money in the form of a bribe, or donation, or made any promise of patronage, to secure my election to the office of ——, on which I am now about to enter (if an oath), so help me God; (if an affirmation), under the pains and penalties of perjury.'"

MR. HERRINGTON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section two as follows: Strike out all of line one, and the the word 'judicial,' in line two, and insert "all State, county, township, district and municipal, executive, legislative, judicial, and ministerial.'"

MR. WATERS. I move the previous question.

THE CHAIRMAN. The gentleman from Santa Clara has the floor.

MR. HERRINGTON. Mr. Chairman: "Members of the Legislature and all officers executive and judicial." Now, the way it reads it will be construed not to apply to anything except State officers. I do not understand, Mr. Chairman, that below a State officer there is an executive officer, where it is spoken of in the Constitution, or that below the Legislature there is a legislative officer included in this section; it confines it exclusively to the Legislature. There are other legislative officers of this State besides officers that are in the Legislature. The State officers are included by the very terms of this section, if gentlemen will notice it and just read it; the Boards of Supervisors are given legislative functions by the new system which we have adopted; the Mayor and Common Council of the City of San Francisco, when that city is organized as it is contemplated it shall be, will be a legislative body, and there is no reason why they should not be sworn as officers and take the oath to support the Constitution of this State.

MR. WELLIN. Mr. Chairman: I wish to call the attention of the Committee of the Whole to a feature in this article which I have sent up, and that is that it gets over all this difficulty that the State has labored under heretofore while trying to prevent the custom of dueling, and placing laws upon the statute books to prevent persons who have ever fought a duel from occupying any political position. In this proposition I propose that the party shall take an oath that he has never fought a duel; therefore the burden of proof rests upon his shoulders. Those who desire to suppress dueling had better vote for it in that form. The next feature is the matter of bribery. There is no law now which reaches a person who offers bribes. The burden of proof again falls upon the people. In all cases it has been next to impossible to prove where bribery had been carried on, and where bribes had been offered. But in this case it again calls upon the person to prove by his own oath that he has not given or promised a bribe in any shape or form. These, and also the employment of Chinese, are three reasonable features why this proposition should be accepted. As to the question of the Union, and loyalty to the Government, I think that part is beyond doubt.

MR. WATERS. Mr. Chairman: I renew my motion for the previous question.

Seconded by Messrs. Prouty, Hunter, Holmes, and Larue.

The main question was ordered.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

The amendment was rejected.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Francisco, Mr. Wellin.

The amendment was rejected.

MR. CROSS. Mr. Chairman: I have an amendment.

THE SECRETARY read:

"Amend, by striking out of line nine the words, 'or test.'"

MR. CROSS. Mr. Chairman: This is an amendment which seems to be of some significance. We have already provided that there shall be some test—as that the Governor shall be of a certain age, etc. If you leave the words "or test" in we shall have two conflicting sections. It adds nothing to the strength of this section unless it is meant to be in direct conflict with some other provisions which we have adopted. We have prescribed certain qualifications for office, and to leave these words here would be in direct opposition to the qualifications we have adopted.

MR. BEERSTECHER. Mr. Chairman: The hour of half past twelve having arrived, I move that the Committee rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

Mr. Murphy in the chair.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Miscellaneous Subjects, have made progress and ask leave to sit again.

RECESS.

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., Mr. Murphy in the chair.

Roll called and quorum present.

MISCELLANEOUS SUBJECTS.

MR. DEAN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, to further consider the report of the Committee on Miscellaneous Subjects.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Nevada, Mr. Cross.

The vote was taken, but the Chair declared no quorum voting.

The question was put again, and on a division the vote stood 22 ayes to 35 noes—no quorum voting.

THE CHAIRMAN. There is evidently a quorum present. The Secretary will call the roll to ascertain.

The roll was called and eighty members answered to their names.

MR. LAINE. Mr. Chairman: I think some members are voting under a misapprehension. This only applies to the oath, and there is no test in striking it out.

The amendment was lost—ayes 11.

THE CHAIRMAN. The Secretary will read section four.

THE SECRETARY read:

"SEC. 4. All officers or Commissioners, whose election or appointment is not provided for by this Constitution, and all officers or Commissioners, whose office or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct."

MR. JONES. Mr. Chairman: I move to strike out section four.

THE CHAIRMAN. The question is on the motion to strike out.

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REMARKS OF MR. JONES.

MR. JONES. Mr. Chairman: One objection to this is that the Legislature has full power to provide for the election or appointment of Commissioners without any constitutional provision. Still if there was no other objection but that I would not make this motion. Now, there is one Board of Commissioners in this State with regard to which the Legislature has not the power to say whether it shall be elected or appointed. That is the Board of Yosemite Commissioners. By an Act of Congress, passed in eighteen hundred and sixty-six, the premises known as the Yosemite Valley and Mariposa Big Tree Grove, were granted to the State of California, and it was prescribed that such property should be managed by a commission composed of the Governor of the State, and eight other Commissioners appointed by him. Now, there have heretofore arisen, and will hereafter arise, questions as to whether these Commissioners may be regarded as State officers, subject to the control of the Legislature. The Commissioners have claimed that they were independent of State authority. They claim that they are Federal officers. I do not understand that the Legislature of the State of California has ever conceded anything of the kind. They take charge of the State's property, and, with the exception of the Governor, they are appointed by the Executive of the State. They make certain reports to the Legislature of the State. Now, if we adopt this section we provide that they shall be appointed or elected, as the Legislature may direct. Now, since these Commissioners may not have that regulation assigned by the Legislature, the adoption of this section is impliedly confessing that it is not a State Commission. The election or appointment is not prescribed. There is a Commission, the appointment or election of which cannot be prescribed by the Legislature, and this amounts to an admission that it is not a State Commission. The State has no control over the appointment of them. This is the only objection I have to this section—that it is a concession that this is not a State Commission.

MR. LAINE. Mr. Chairman: I hope the motion will not prevail. If we strike out this section it will allow the Legislature to create a Commission and appoint to that office. This is an inhibition which will prevent the Legislature from appointing to an office. Both Governors Booth and Haight vetoed bills upon that ground. Section four is the section under which these decisions were made, and it ought not to be stricken out.

The motion to strike out was lost.

MR. JONES. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Substitute for the last five words, 'in accordance with law.'"

THE CHAIRMAN. The question is upon that amendment.

Rejected.

THE CHAIRMAN. The Secretary will read section five.

THE SECRETARY read:

"SEC. 5. The fiscal year shall commence on the first day of July."

MR. FILCHER. Mr. Chairman: I move to strike out July and insert January.

MR. HILBORN. Mr. Chairman: I had thought that such an amendment would be a good one, but on consultation with the Treasurer of my county, and other officials throughout the State, I find that the change is not a good one. As far as the State is concerned it would be all right, but we collect taxes on the first Monday in January, and then there is the delinquent roll, which is not finished until February or March. The consequence is that the fiscal year often runs until after the taxes are collected. I think the change would be a bad one.

THE CHAIRMAN. The question is upon the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section six.

THE SECRETARY read:

"SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law."

No amendment.

THE SECRETARY read section seven:

"SEC. 7. No contract of marriage shall be invalidated for want of conformity to the requirements of any religious sect. But no marriage hereafter contracted in this State shall be valid between the parties thereto unless a public record thereof be made in such manner as may be provided by law."

MR. BARRY. Mr. Chairman: I offer an amendment or substitute.

THE SECRETARY read:

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

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman: That is substantially the old Constitution. I will say that if this section is adopted it will virtually destroy the sacredness of marriage, from the fact that it requires a public record to be made, and there are a great many who would enter into a contract of marriage, not knowing of any such provision. The marriage would be null and void under this provision, unless a public declaration be made. Now, sir, the apparent result of this section ought to be obvious to every member of this Convention. The matter is fully covered now, I think, by the Code. Section sixty-eight of the Civil Code covers the ground, and the provision of the old Constitution is all that is necessary here.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: The argument of the gentleman does not strike me with a great deal of force. The object of this amendment is a good one, and I will state it to the Convention. There is a practice that has grown up in this State whereby persons, after the death of some wealthy individual, come forward and by perjury establish a marriage. Now, this would be impossible under a provision requiring it to be made a matter of public record. There ought to be some guard against the evil.

MR. BARRY. If this section should be passed, and there should be a private marriage, would not the effect be that the children would be illegitimate?

MR. LAINE. No, sir; it is limited to the parties themselves, and not to the children.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: It seems to me we are going too far in constitutional legislation and treading on dangerous ground. It is easy to regulate the marriage relation by statute, as far as public convenience and public necessity require that it ought to be regulated. It is unwise, in my judgment, to adopt a strict constitutional rule which, if it be found to work badly, cannot be changed by the Legislature. Now, in New York, many years ago, for reasons very similar to those given by Mr. Laine, an attempt was made to legislate in this same way. The result was that in two years it was repealed, because it was found that a great many persons who supposed they were married were not, and it was found that men died, leaving supposed widows, who were not widows, and the law was repealed. This matter can safely be trusted to the Legislature. I hope the amendment will be adopted.

The amendment was adopted.

THE CHAIRMAN. The Secretary will read section eight.

THE SECRETARY read:

"SEC. 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property."

MR. DUNLAP. I offer an amendment.

THE SECRETARY read:

"Amend by adding: 'And laws shall be passed as to the property that is held in common by the husband and wife.'"

MR. DUNLAP. That is the law of the old Constitution. I don't think it would be wise to change the rule.

MR. LAINE. It is unnecessary, for the Legislature will pass these laws anyway.

THE CHAIRMAN. The question is on the adoption of the amendment.

Rejected.

THE CHAIRMAN. The Secretary will read section nine.

THE SECRETARY read:

"SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes."

MR. O'SULLIVAN. Mr. Chairman: I offer an amendment or substitute.

THE SECRETARY read:

"Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State."

MR. O'SULLIVAN. Section nine, as it stands, is meaningless as it can be, therefore I offer this amendment.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: This same amendment came up before the Committee of the Whole in another article. It was discussed there. The same amendment now offered was offered before. Now the word "perpetuities" includes the others. Where perpetuities cannot exist, it certainly prohibits primogeniture and entailment. But this section does allow, and is intended to allow these perpetuities to eleemosynary institutions. That should not be prohibited. This section contains all that is necessary for the Constitution. It covers the whole thing, including the amendment.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope the amendment will be adopted. I think the provision of the old Constitution is not sufficiently full and elaborate to meet the demands of the times. Because a thing is in the old Constitution, is no reason why it should not be changed. We have been here five months trying to change the old Constitution, and whenever we find anything that needs changing it is our duty to change it, because that is what we were sent here for. That is the way we make new Constitutions. Now, under this original provision here, what is to prevent A from willing his property to his oldest son B, and what is to prevent B from willing it in turn to his oldest son C, perpetuating it down the line? For the purpose of preventing that I ask for the adoption of the amendment. Another thing I object to is, that it excepts eleemosynary institutions. I do not want to except anything. Europe has been troubled with eleemosynary church institutions, and it has cost revolution after revolution. I am no more in favor of allowing perpetuities to them than I am to the Bank of California; I want them to stand on the same level as all other institutions and within the control of the legislative power of the State. I don't want any power built up in this country under the guise of an eleemosynary institution that shall be above all future Constitutions and above the legislative power; I therefore hope that the amendment will be adopted.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I think we have learned something that we never thought of before, namely, that the granting of perpetuities to eleemosynary institutions led to the destruction of States. Now, let us see what eleemosynary means. Webster defines the word as meaning, relating to charity, alms, or alms-giving; intended for the distribution of charity; given in charity or alms; supported by charity; that is the definition. Now, the gentleman deliberately says that hereafter there shall be no gifts in this State to eleemosynary institutions.

MR. WYATT. I think you misunderstood me, I said no perpetuity should be granted.

MR. ESTEE. I understand the gentleman; he opposes this section because it allows grants to eleemosynary institutions, and is in favor of the amendment because it prohibits it; I think that is his proposition.

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MR. WYATT. No, sir, not exactly; I say they should not be allowed perpetuities beyond legislative control.

MR. ESTEE. Eleemosynary institutions do not make purchases, they are simply charitable institutions, and our proposition is, that no perpetuities shall be granted except to that class of institutions. This is allowed everywhere in the world, and I hope California will not be an exception to the rule. I hope that in California, whenever any citizen who has no heirs; whenever any citizen whose heirs are unworthy of his confidence, dies, he shall be permitted to give his property to eleemosynary institutions and direct its use; that is the reason I most earnestly oppose the amendment. I believe the old section is correct; it reads exactly as the new one does. I claim that charitable grants should be encouraged as much as possible. Allow those who choose to give to charitable institutions the power to do so; give them the broadest latitude. Let them not be circumscribed in their liberality, and when you do that you are only responding to the broad and liberal sentiments of the people of this State.

MR. VACQUEREL. Mr. Chairman: I am in favor of this amendment. I deny the right of any man on this floor to legislate forever. It is all very well to talk about charity. Let us be charitable with what we possess, and not with what we do not possess. What suits us to-day, might not suit the people fifty years from now. Have we a right to legislate for them? I deny it. Let us legislate for the present generation, and not until the resurrection.

MR. HILBORN. Mr. Chairman: I am in favor of the section as it stands; first, because it is the old Constitution; second, because I can see no reason why we should discourage wealthy men who are so disposed from leaving their money to charitable institutions. They would never do it if we give the Legislature power to get at that money, and either confiscate it or divert it from the purpose for which it was given.

MR. SHAFTER. Mr. Chairman: I am in favor of this section as it stands. There is a misunderstanding with some. It does not apply to children of families; but only the exception is made so as to allow these gifts to be made for charitable purposes. Why not? If a man wants to leave ten thousand dollars to one of these institutions, why should we step in and say he shall not do it? And of course he won't do it when he knows that the endowment is liable to be diverted at any time.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from San Francisco, Mr. O'Sullivan.

Lost.

MR. BEERSTECHER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Add to the section: 'Nor shall primogeniture or entailments ever prevail in this State.'"

MR. BEERSTECHER. Mr. Chairman: Now this amendment in no wise affects eleemosynary institutions. It does not prevent any one who may see fit from donating or devising property to them.

MR. TULLY. I rise to a point of order. That is the same thing just voted down.

THE CHAIRMAN. The point of order is well taken.

MR. WYATT. If it would do any good—but we have never yet been able to overrule the decision of the Chair.

MR. VACQUEREL. I move to amend by adding, "no perpetuities shall ever be allowed in this State."

THE CHAIRMAN. The question is on the amendment.

Lost.

BRIBERY AND ITS PENALTIES.

THE CHAIRMAN. The Secretary will read section ten.

THE SECRETARY read:

"SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment."

No amendment.

THE SECRETARY read section eleven:

"SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice."

MR. HAGER. I move to amend by striking out the word "hereafter," in the second line. Let it apply to all who have been convicted as well.

MR. ESTEE. That includes members of this Convention. [Laughter.]

MR. AYERS. That would leave it unequal. I move to strike out the words, "those who shall hereafter be," and insert "persons."

Adopted.

ABSENCE FROM THE STATE.

THE CHAIRMAN. The Secretary will read section twelve.

THE SECRETARY read:

"SEC. 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person."

THE CHAIRMAN. There being no amendment, the Secretary will read section thirteen.

PLURALITY OF VOTES.

THE SECRETARY read:

"SEC. 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution."

THE CHAIRMAN. There being no amendment, the Secretary will read section fourteen.

A STATE BOARD OF HEALTH.

THE SECRETARY read:

"SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health."

THE CHAIRMAN. There being no amendment, the Secretary will read section fifteen.

MECHANICS' LIENS.

THE SECRETARY read:

"SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of said liens."

MR. MORELAND. Mr. Chairman: I offer a substitute for section fifteen.

THE SECRETARY read:

"SEC. 15. Mechanics, laborers, artisans, and material-men of every class, shall have a lien upon the article manufactured or repaired by them, for the value of their labor done thereon, or material furnished therefor. The land upon which any building, improvement, or structure is constructed, and a convenient space about the same, may also be subject to such liens. The Legislature, at its first session, shall provide for the proper enforcement of such lien."

MR. BARBOUR. Mr. Chairman: I offer an amendment to the amendment.

THE SECRETARY read:

"SEC. 15. Mechanics, artisans, laborers, material-men, and miners, shall have liens upon the building, structure, mine, or other improvement upon which they have performed labor or supplied material, for the value of the work done or material furnished, and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens, making such building, structure, mine, or other improvement, and the owner thereof, responsible for such liens, notwithstanding any payment, settlement, or contract made by him with contractors or subcontractors before such liens have been paid."

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: The amendment is the minority report of the Committee on Miscellaneous Subjects. The section as reported, like the amendment proposed by the gentleman from Sonoma, does not strike at the question that affects mechanics and laboring men in this matter. To all intents the constitutional provision, and the enactments of the Legislature have been of no value to them, and it is a fact that most of them have preferred to lose their debts rather than endeavor to enforce the law. The Legislature has passed laws, but the artisans have been deprived of the benefit on account of collusion between the owner and the contractor. Whenever the artisan attempted to apply his lien, he was forestalled by the fact that a payment had been made by the owner. The object of this amendment is to correct that evil, by making the contractor the agent of the owner, so that when the lien is filed the owner cannot come forward and say I have paid it. The decisions were to the effect that a payment discharges a lien, so the hands of the artisans were tied. That is the reason the mechanics of the State want this provision. It is one that no Court can get around. Of course, if you could prove that these payments to the contractor were not made in good faith that would vitiate it, but that is a hard thing to do. The fact is they are not generally made in good faith, but the thing is to prove it. The fact is, that two thirds of the contracts in the city of San Francisco for the erection of buildings have been taken by the contractor with the intention of defrauding the workmen who do the work. Now, so far as the owner is concerned, he has a perfect means of protecting himself, because the owner need make no payment until he is presented with proof that the sub-contractors, laboring men, and material-men are all paid. This amendment is intended to reach directly that evil.

MR. INMAN. Mr. Chairman: Though I possibly could stand that section as it now stands, the amendment is too much. It gives a lien on the land. I am entirely opposed to it.

REMARKS OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: I have not had time to examine the amendment offered by the gentleman from San Francisco, but it seems to me that most of it is matter that can be regulated by law. The amendment which I have introduced differs with the section reported by the committee in two respects. First, it extends the lien to the land on which the building is constructed, and a convenient place about the same. That is what the law is at present. To give mechanics a lien upon the house itself, would be of but little avail. They must have a lien upon the ground in order to benefit them much. They could take the house away, but it is not worth much after it is moved. That is the principal difference between my amendment and the original section. The other respect in which it differs is, that it provides that the Legislature, at its first session, shall provide for the proper enforcement of it.

MR. CAPLES. You say you would give a lien upon the land. Suppose A, who resides in New York, leases a piece of land in San Francisco to B, for a term of years, and B lets a contract to build a house, and a lien is filed on that house and on the land.

MR. MORELAND. That can all be provided for by law, as it is provided for at this time.

MR. HILBORN. This will not protect all classes of laborers. If we are going to protect any, it seems to me we should include them all. If a man helps to drive a band of cattle or sheep, he ought to have a lien on them until he is paid his wages. It should not be confined to mechanics alone.

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SPEECH OF MR. FARRELL.

MR. FARRELL. Mr. Chairman: This question is one of no ordinary importance. I hope it will receive at the hands of this Convention that careful consideration which its importance demands. I believe this class of citizens should receive this protection. I know from my own personal experience as an artisan, and the experience of the vast army of builders, mechanics, and material-men of the city which I in part represent, that the passage of this amendment as proposed by Mr. Barbour will be to these people one of the best arguments in favor of the adoption of this Constitution. Mr. Chairman, if this Convention adjourns without granting this much needed relief, it will be almost fatal to the instrument which we are framing. Gentlemen have stood upon this floor and demanded the taxation of mortgages and the restriction of corporations; and now we insist on a proper consideration of the industrial and mechanical interests. We are only asking the Convention to protect the laboring man and mechanic from thieving contractors and scoundrelly owners, who connive to swindle the workman out of his wages. This is the most important provision that has been before the Convention. These laboring men and mechanics have been the victims of swindling contractors long enough. I am opposed to the section introduced by the committee, and also to the amendment of the gentleman from Sonoma. We want to have some responsibility attached to the owner. We want to make the owner responsible for all the debts on the building until it is completed, so that the sub-contractors and material-men will receive their money. If we place this responsibility upon the owner, he will take it upon himself to know that the contractors are responsible parties, and he will see that the mechanics and laboring men are paid as they go along.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I am opposed to this idea of making the owner responsible, unless there is a clause in there providing that such claim or lien shall be filed with the County Recorder within sixty days after the completion of such building or furnishing of such material. Without that, it will leave a lien upon the property forever. That is what I object to.

MR. BARBOUR. That will do no harm. I will accept that amendment.

MR. ESTEE. I shall support the amendment if that is put in. That is all I object to. Then the owner need not pay for his building until the end of sixty days. That is all right. I think this whole matter is in the nature of legislative enactment; yet, if it will accomplish the purpose of protecting laboring men and mechanics, who are dependent upon their daily earnings for their daily bread, I am willing, as far as I am concerned, for it to go into the Constitution. It can do no harm if properly guarded, and it may do some good. The owners will have sixty days in which to look round and see whether these bills for labor and material are all settled or not.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I understand a part of the reasons which may be urged for making mechanics preferred creditors, but why they should be preferred to the man who furnishes money to pay laborers is more than I can understand. The section reported by the committee is better than the amendment. I understand why the workman should be a preferred creditor, but I don't understand why the lumberman should be a preferred creditor. There has been no good reason urged here why he should stand on any better ground than any other creditor. Certainly lumber dealers are capable of looking out for their own interests. If they are not satisfied as to the solvency of the creditor then let them get security. I hope the amendment will be voted down, and the words "material-men," stricken out.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I think an examination of the laws of other States will show that they nearly all include material-men, as well as mechanics and laborers. Now, sir, the gentleman says, he cannot see why material-men should be included, why he should have a lien for the lumber which he furnishes, when the man who furnishes the money has not. The man who furnishes money, in nine hundred and ninety-nine cases out of a thousand, always takes security before he furnishes the money. The money, in nine hundred and ninety-nine cases out of a thousand, is furnished on mortgage, and the man who borrows money generally takes sufficient to construct the building. Whereas, he goes to the material-man and orders material as he needs it. If there is any reason why the mechanic should have a lien, there is the same reason why the material-man should have a lien. Mr. Inman says, he is not in favor of having a lien upon the land. I allow that argument to go for what it is worth, coming from a farmer. Now, sir, I desire that mechanics, laborers, and material-men should have a good and sufficient lien; one that can not be overturned and set aside by the decision of any Court in this State. The report of the majority amounts to nothing. But the amendment of Mr. Barbour as amended by Mr. Estee, means something. It says that the material-man and the laborer shall have his coin, notwithstanding any collusive contract that may exist between the man erecting the building and the owner; and that they shall have a right to have this lien enforced within a limited time.

SPEECH OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: I am in hopes that the amendment presented by Mr. Barbour will be adopted by this Convention. We have been called upon from time to time to adopt measures for other interests in this State. The farmer has been protected by having his growing crops exempted from taxation; the railroad companies have been looked after; those who deposit their money in banks have received some protection, and now we, as working men, ask some protection. We ask what is just and fair. Now, I will give a sample of the way business has been conducted in San Francisco: In eighteen hundred and seventy-six, a man named Irwin entered into a contract with a man named Flood, to build six houses in San Francisco, for the sum of fifteen thousand dollars. The work, when finished, cost twenty-five thousand dollars, and the laboring men, material-men, and sub-contractors lost on that piece of work over ten thousand dollars. The gentleman from Solano wants to know what reason there is for including material-men. There is one reason why they should all be protected. It is one of the easiest things in the world for the owner of the property, when he lets a contract for building, to get security of the contractor that he will pay the bills. I have had experience in building for over twenty-five years, and I have seen a great deal of this swindling. There is no opportunity for a man who applies for a job on a building to know whether the man he is working for is good pay or not. He simply goes to work there, supposing that the business will be carried on honestly, and that he will get his pay. The owner, by conniving with the contractor, make a contract at thirty or forty per cent. less than it is worth, and then divide the difference between themselves, and cheat the laborers out of their labor. All we ask is some protection against this kind of thing. Look at the maritime rules. Let a man go to work on a ship, and that ship must pay for every dollar before it can leave. The same is true as to material. We are perfectly willing to accept the amendment of the gentleman from San Francisco, Mr. Estee. We only want what is right.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Biggs, McFarland, Tully, and Larue.

THE CHAIRMAN. The question is: Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment offered by the gentleman from San Francisco, Mr. Barbour.

Division was called for and the amendment adopted, by a vote of 51 ayes to 33 noes.

IN RELATION TO INSURANCE.

THE CHAIRMAN. The Secretary will read section sixteen.

THE SECRETARY read:

"SEC. 16. The amount named in either a fire or marine insurance policy shall be deemed to be the true value of the property insured, for insurance purposes."

MR. WEBSTER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out the words, 'deemed to be,' where they occur in the second line."

THE CHAIRMAN. The question is on the amendment.

MR. WEBSTER. Mr. Chairman: It occurs to me that these words are superfluous. By striking out these words it will read: "The amount named in either a fire or marine insurance policy shall be the true value of the property insured, for insurance purposes." It occurs to me that they mean nothing, or else they mean just what the section does without them.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I think this section ought to be stricken out entirely, and I so move. If this section is adopted it will lead necessarily to very great frauds. It proposes to establish an arbitrary rule, that, for instance, if I insure a quantity of goods for ten thousand dollars, that the goods shall be deemed to be worth that amount. It shuts out all inquiry in order to get at their true value. Now it is necessary to insure property constantly which the insurer has not seen and cannot see; which he has no opportunity to examine. Take property that is at sea. The insured party is the only one who knows what the value is, and he has the means of ascertaining precisely what it is. Then again, take an insurance on a stock of goods in a store. It is impossible for the insurer to examine these goods, examine every portion of them. They necessarily have to go upon a general estimate of their value, and even then they are liable to be imposed upon, for the stock of goods is constantly fluctuating. If he keeps a proper set of books, and they are preserved, there is no difficulty in telling what have been destroyed. But if you pass a section of this kind, it will open the door to wholesale frauds. The opportunities for fraud will be greatly increased in the case of personal property. For these reasons I move to strike out the section.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I hope the section will pass. There is not one solitary question that has ever come up before this Convention that is more important than the one under consideration. If there is one question that the people of California are interested in, it is this one. I have known instances in Auburn where men have insured for years, and paid in insurance a large amount, and when the property was destroyed they could not get anywhere near what it was insured for, without going into a lawsuit with a powerful corporation. Now, if we pay these companies their rates on a certain amount, that amount should be paid. If it stands there twenty years without loss, they are getting four per cent. on the money. If the property is insured for ten thousand dollars, it ought to be paid accordingly. That is the principle of life insurance. If a man dies he is paid the amount of his policy. People are always browbeaten, and threatened with a lawsuit unless they submit to the arbitrary reduction of the adjuster. They come and insure my house for one thousand dollars, and so long as it stands they collect rates on the valuation of one thousand dollars. But it burns down, and then the adjuster comes along and says, I will pay you five hundred dollars, and I have to take it or go to law with the chances in

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favor of the full amount being squandered in the expense of litigation. The people realize these abuses forcibly, and they demand some protection. I hope the section will be retained and made stronger if possible. I would like to see the phraseology corrected to read something like this: that the amount named in a fire or marine insurance company shall be the amount for which the company shall be liable. If they take an insurance on my property for more than it is worth, that is their business. I hope it will not be stricken out.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I don't know whether I am on the popular side or not, but I am going to take the chances. This is a very bad provision and should be stricken out. The reasons for it are very apparent to me. This says that the amount named shall be deemed to be the true value of the property for insurance purposes. Now, sir, insurance companies largely depend upon the representations of the owners as to the value of the property. It must always be so. You cannot measure every bolt of broadcloth and every yard of linen. You have to take the word of the merchant as to the value of his goods. If you insert such a provision as this in the Constitution, you will be putting a premium on falsehood and arson. When such a provision as this appears in the Constitution of California, every villain who can, by false representations, induce an insurance company to place a policy upon his property, will be induced to fire his property, thereby endangering other property adjoining him. That would be one of the most dangerous features of this thing. I know of an instance where a man insured his property for more than it was worth, and three times it was burned by incendiary means. The third time, at the request of his neighbors, whose property had been destroyed by fire, the company contested his claim, and found that the property which was insured for two thousand five hundred dollars was only worth about five hundred dollars. This is a danger which we should avoid. This same danger would occur in marine insurance. With such a provision as this, some man might be induced to fire the ship in order to get the insurance, thus endangering the lives of hundreds. It won't do; there is no reason in it.

MR. FILCHER. Are you an insurance agent? [Laughter.]

MR. CROSS. No, sir; but I have studied this business in connection with my profession. Let us be guided by reason and not by prejudice. Let us act as reasonable men, and not put a premium on fraud in the Constitution of the State. It is a rule of law that frauds vitiates every contract; but here we propose to do away with that, and reverse the rule of law. I hope it will be stricken out.

MR. SHAFTER. Mr. Chairman: If this section is not stricken out I will move to insert after the word "insurance" the words "and criminal." I will do that in order to make the section consistent. Now, sir, if a man gets the value of his property which has been destroyed, if he be an honest man, that will satisfy him. The owner should receive pay only for what is destroyed. A man may have his goods insured for ten thousand dollars, and that may be a fair valuation. Yet in a month the stock may be sold out down to two or three thousand dollars. Does any reasonable man say that the company ought to pay him the full amount in the policy. I say pay a man just what he has lost and no more.

THE PREVIOUS QUESTION.

MR. TULLY. Mr. Chairman: I move the previous question.

Seconded by Messrs. Huestis, Shoemaker, Estee, and McConnell.

THE CHAIRMAN. The question is: Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment to the amendment offered by the gentleman from Alameda, Mr. Webster.

Lost on division—ayes, 11.

THE CHAIRMAN. The question is on striking out the section.

Division was called for, and the section was stricken out, by a vote of 51 ayes to 32 noes.

TERMS OF APPOINTED OFFICERS.

THE CHAIRMAN. The Secretary will read section seventeen.

THE SECRETARY read:

"SEC. 17. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold their position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years."

MR. HILBORN. Mr. Chairman: I move to strike out the word "their," in the fifth line, and insert the word "his." My object is to make it good grammar. I hope this instrument will be gotten up in good English, at least.

The amendment was adopted.

MR. DOWLING. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"The Governor, and all the officers under this State, shall be liable to impeachment for misdemeanor in office during their continuance in office, and for two years thereafter, or more, as the case may be."

Lost.

ALIENS SHALL NOT HOLD REAL ESTATE.

THE CHAIRMAN. The Secretary will read section eighteen.

THE SECRETARY read:

"SEC. 18. No persons other than citizens, or those who have declared their intentions to become such, shall hereafter acquire or own, either by purchase or otherwise, real property in this State contrary to this provision—such property shall escheat to the State; nor shall any lands in this State be held in trust for any alien; but the creation of any trust in lands for the benefit of an alien, shall at once escheat the land to the State."

MR. AYERS. I move to strike out the section.

Carried.

MR. RINGGOLD. Mr. Chairman: I offer a new section.

THE SECRETARY read:

"No person shall, on account of sex, be disqualified to enter upon and pursue any lawful business, avocation, or profession."

Adopted.

MR. INMAN. I move that the committee rise, report progress, and ask leave to sit again.

Lost.

MR. JOYCE. Mr. Chairman: I offer a new section.

THE SECRETARY read:

"SEC. 19. Eight hours shall constitute a legal day's work on all public works."

Adopted.

PAY OF MEMBERS.

MR. DEAN. Mr. Chairman: I offer a new section.

THE SECRETARY read:

"Nothing in this Constitution shall prevent the Legislature from providing by law for the payment of the expenses of this Convention, including the per diem of the delegates for the full term of said Convention."

MR. SHAFTER. Mr. Chairman: I object to this because the members are directly interested. I don't think it looks well to put a thing of that kind in the Constitution if there is any prohibition that can be fixed in the legislative department. I am opposed to putting in such a a suggestion to the Legislature as this.

The section was adopted, on division, by a vote of 58 ayes to 33 noes.

PAY OF SUPERVISORS.

MR. WHITE. Mr. Chairman: I offer a new section.

THE SECRETARY read:

"The Supervisors of the various counties of this State shall receive for their services an annual salary of one hundred and fifty dollars, and one dollar for every twenty miles of travel from their place of residence to the county seat and back; and this shall be in full for all services rendered by them, and they shall hold such sessions for business as may be prescribed by the Legislature."

MR. WHITE. Mr. Chairman: I hope this amendment will be adopted. This will be ample pay for the Board of Supervisors who will not be more than thirty or forty days in session. The idea of paying Supervisors such large sums is all wrong. Almost every farmer interested in the welfare of the county, is willing to take the office for only his expenses. One hundred and fifty dollars, with his mileage, will more than pay his expenses. I hope it will be adopted.

MR. WATERS. I move that the committee rise, report back the article, and recommend its adoption.

Division was called for, and the motion prevailed by a vote of 55 ayes to 37 noes.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Miscellaneous Subjects, have amended the same, and recommend its adoption as amended.

MR. McFARLAND. Mr. President: I move that the Convention do now adjourn.

Lost.

MR. BEERSTECHER. Mr. President: I move that four hundred and eighty copies be ordered printed.

So ordered.

DISTRIBUTION OF POWERS.

MR. AYERS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Murphy in the chair, to consider the article relative to the distribution of powers.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE SECRETARY read amendment number five hundred and thirty-six, introduced by Mr. McCallum:

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

"SEC. 2. The Legislature may provide that cases submitted in the Courts shall be decided within a limited time, under such conditions as may be provided by law."

MR. LAINE. Mr. Chairman: I move to strike out section two.

Carried.

MR. BARTON. Mr. Chairman: I believe that section one will conflict with the duties of the Railroad Commission, and I move that it be stricken out.

MR. CROSS. I think it is all right, except that the word "hereinafter" should be stricken out, and say: "except as in this Constitution provided."

MR. ESTEE. I hope the word "hereinafter" will remain in there, because there is no question but what the Railroad Commissioners will exercise both legislative and judicial functions. Why strike it out?

MR. VACQUEREL. Mr. Chairman: I am opposed to striking out the section. We have four powers which we might just as well specify. We have the executive, judicial, legislative, and Railroad Commission-

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ers. [Laughter.] Therefore I hope we will specify the powers of government in this Constitution.

MR. HAGER. This is copied from the old Constitution.

THE CHAIRMAN: The question is on the motion to strike out the section.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Nevada, Mr. Cross.

Adopted.

MR. VACQUEREL. I move to insert, "and Railroad Commissioners."

Lost.

MR. LARUE. Mr. Chairman: I move that the committee rise, report back the article, and recommend its adoption.

Carried.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on distribution of powers, have amended the same, and recommend its adoption as amended.

MR. FILCHER. I move that four hundred and eighty copies be ordered printed.

So ordered.

STATE AND MUNICIPAL INDEBTEDNESS.

MR. AYERS. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Murphy in the chair, for the purpose of considering the article relative to State and municipal indebtedness.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the article.

THE SECRETARY read:

"ARTICLE —.

"STATE INDEBTEDNESS.

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

MR. LAINE. Mr. Chairman: I move to strike out the words, "judicial district," and insert "county or city and county."

Adopted.

MR. BEERSTECHER. Mr. Chairman: I move that the committee rise, report the article back, and recommend that it be adopted as amended.

So ordered.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the article on State and municipal indebtedness, have amended the same, and recommend its adoption as amended.

MR. VACQUEREL. Mr. President: I move to adjourn.

Lost.

MR. AYERS. I move to take up the preamble and bill of rights for second reading.

Lost.

LOCAL OPTION.

MR. HAGER. I move to take up proposition number five hundred and twenty-two, relative to local option.

So ordered.

MR. WATERS. Mr. President: I move that the report of the Committee of the Whole be adopted, and the article be indefinitely postponed.

Carried.

LAND AND HOMESTEAD EXEMPTION.

MR. LARKIN. Mr. President: I move that we now take up for consideration the article relative to lands and homestead exemption.

Declared carried.

MR. SCHELL. Mr. President: I rise to a point of order. It takes a two-thirds vote to take it up out of order.

THE CHAIR. Well taken.

Division was called for, but no quorum voted.

ADJOURNMENT.

MR. LARUE. Mr. President: I move we adjourn.

Carried.

And, at five o'clock P. M., the Convention stood adjourned until tomorrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND FORTY-FOURTH DAY.

SACRAMENTO, Tuesday, February 18th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Freeman,	McFarland,
Berry,	Grace,	Miller,
Casserly,	Gregg,	O'Donnell,
Cowden,	Hale,	Overton,
Dudley, of San Joaquin,	Hall,	Reddy,
Eagon,	Howard, of Los Angeles,	Terry,
Edgerton,	Keyes,	Wilson, of 1st District,
Fawcett,	Lindow,	Winans.
Finney,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Hale.

Indefinite leave of absence was granted Messrs. Lindow and Finney on account of sickness.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

EDUCATION.

THE PRESIDENT. The next business on the general file is the report of the Committee of the Whole on the article on education. The Secretary will read the amendments.

THE SECRETARY read all the amendments, and then the amendment to section four as follows:

"SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State, for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or have been granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State."

Concurred in.

COMMON SCHOOLS.

THE PRESIDENT. The Secretary will read the amendment proposed by the Committee of the Whole to section five.

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THE SECRETARY read:

"SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school has been established."

Concurred in.

THE PRESIDENT. The Secretary will read the amendment to section six.

THE SECRETARY read;

"SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax shall be applied exclusively to the support of primary and grammar schools. In the primary and grammar schools no language but the English shall be taught."

MR. LARUE. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section six as follows: Strike out the words, 'in the primary and grammar schools no language but the English shall be taught.'"

MR. LARUE. Mr. President: It seems to me that it will debar children attending the grammar schools from any preparation for entering the University. I hope it will be stricken out.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I am in favor of the amendment offered by the gentleman from Sacramento. I hope that the amendment will be adopted, and that the section will be restored as it originally stood before the amendment was offered by General Howard. In advocating the striking out of this portion of the section which was added to it by General Howard, I am not influenced by any sectarian or by any national feeling. But, Mr. President, I place it upon the broad ground of education. It is too late in the day for a Convention, as intelligent as this Convention, to place a limit upon the educational facilities of the children of this State. I, sir, have had occasion before this subject come up before the Convention, to examine carefully and critically, from every existing Constitution of every State of this Union, and, sir, I fail to find anything similar to the one that was added to this section upon the motion of the gentleman from Los Angeles, General Howard. When the pilgrims from England hundreds of years ago landed on Plymouth Rock they brought with them the common school system, and as early as sixteen hundred and forty-seven there was in Massachusetts Bay Colony a law providing for the instruction of the youth in every township.

As early as sixteen hundred and forty-seven it was provided in Massachusetts Bay Colony that if a town contained over one thousand inhabitants that they were obliged to employ a teacher, at public expense, who was competent to teach Latin and Greek, and fit children for the University. In seventeen hundred and twelve, in Connecticut, grammar schools were organized in which the Greek and Latin languages were taught at public expense. Now, sir, two hundred and twenty years ago, in Massachusetts Bay Colony, and over one hundred and fifty years ago, in the Colony of Connecticut, they were already giving to the youth of those Colonies the advantages, through the medium of public schools, to learn the dead languages, and be prepared for the University. Now, sir, if I had time, and this Convention was in the mood to listen, I would be able to demonstrate that at the Exposition of eighteen hundred and sixty-seven, at Paris, where competent Commissioners were sent from this country, and were sent from England—the report of these Commissioners goes on to say that England and the United States are far in the back ground as far as the education of the masses is concerned. That Germany, and France, and Austria are taking the lead in these matters. The English Commissioners say that England is daily losing footing in the marts of the world because her artisans, her laborers, her common people, are not receiving as thorough an education as the laboring people of Germany, France, and Austria are receiving. It is a known fact that Prussia conquered Austria in eighteen hundred and sixty-six through the intelligence of her soldiers; also, that Germany overcame France because of the intelligence of her soldiers, many of whom were able to speak the French language, and had a topographical knowledge of the French territory. The rudiments of education were laid deep in the minds of these men. In the plastic minds of their youth was planted the seed that sprung up and germinated, and they to-day make these nations the foremost nations of the world in regard to education. I merely desire, now, as a part of my argument, to read a speech that was delivered by Robert C. Winthrope, of Massachusetts, at the Boston Lyceum, December twentieth, eighteen hundred and thirty-eight:

"Among the many striking changes of these wonderteeming times, hardly any one seems calculated to make a stronger impression upon a reflecting New England mind, than this. If there has been anything upon which New Englanders have been accustomed to think that they might pardonably pride themselves, it has been their free school system. While others have been boasting of the fertility of their soils and the salubrity of their climates, we have been content to be jested about our rocks and ice, our east winds and consumption, while we could point to institutions of popular education, which were admitted to be models for the world. And year after year, as our sons and daughters have swarmed out from the old New England hive and sought better soils and brighter skies in the distant west, we have commended these cherished institutions to them with our parting tears, and counted it among our most precious consolations under the bereavement, that by them and in them New England principles would be planted and perpetuated thousands of miles over the mountains. How harshly, then, does it strike upon our eyes, and ears, and hearts, to see other institutions now sought out as examples, to have other schools made the object of praises so long awarded to ours, and to feel that New England will soon be called on to acknowledge and admire, in the intellectual fields and gardens of our country, 'strange leaves and fruits not her own'—*novas frondes et non sua poma*. Above all, how stern and stoical a philosophy does it require, not only to acquiesce in the justice of all this, not merely to give the assent of silence to the sentence which supersedes us in our most cherished field of competition, but even to unite, as we have done, in transferring the very diadem of our beauty and our pride to other hands!

"But this view of the circumstances to which I have alluded comprises but a small portion of its impressive character. Had the free school system of New England been obliged to relinquish its claims upon the admiration and imitation of the world in favor of similar institutions upon our own American soil; had some thrifty scion of our own raising outshot the parent stock, and were it now standing by its side to cast upon it no greater disparagement than that of being 'the lovely mother of a lovelier daughter,' our vanity might have been healed by the very blow which wounded it, and we should have been compensated for the immediate honors we had lost, by the derivative and reflected glory we had acquired. But far different has been our fate. Robbed of our own richest and proudest distinction, we are compelled to see it claimed and enjoyed by those whom we have been accustomed to regard with feelings only oscillating between pity and contempt, and with whose intelligence, moral, or political condition we should have scorned to claim, or even to admit, any connection or sympathy. The ignorance and degradation of Prussian hirelings, and Austrian bondsmen, and Russian serfs, have so long been the theme of our wholesale declamations, and have constituted so completely the sum and substance of all our associations with those regions of the earth respectively, that as little should we have expected any good thing out of either of them as an ancient Jew did out of Nazareth. Yet, from these very mountains of darkness and valleys of the shadow of death a light has sprung up, of whose rays we are now glad to borrow. What would——"

THE PRESIDENT. The gentleman's time has expired.

MR. BEERSTECHER. I ask leave to finish the reading of this.

MR. WYATT. I object.

MR. WATERS. I object.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I hope that the Convention will concur in striking out the last part of this section. I have failed so far to see the necessity of inserting such a clause in the organic law of the State, and I am yet to see a plank in the platform of the different parties represented in this Convention that gives power to the delegates to restrict education. Education is the corner-stone of republican institutions, the safeguard of liberty, and I may well say the pride of this Union. The common school system of the United States is the admiration of the whole world, and the best proof that can be given is, that other nations try to establish such systems in their domains. Actions speak louder than words, and I am yet to hear of any people in the world that does not fully recognize our common school system as the best. Then, gentlemen, why should we try to undermine that solid foundation? Why should we go backward instead of progressing? Did we come here to legislate in favor of sectarianism? Did we come here to abridge the liberties of the people? Did we come here to restrict education? Why, Mr. President, I enter my solemn protest against any measure that tends to curtail education whatsoever. Can we go back to our constituents with a clear conscience; with the satisfaction of having done our duty, if we keep such a clause in the Constitution? We have been sent here to try to stop monopoly of land; to lessen the expenses of the State; to render taxation equal; to try to stop Chinese immigration, and so forth; but I deny that any member has been elected to abridge or lessen education. If the teaching of foreign languages was not existing to-day in our public schools, I certainly would not raise my voice to establish it, but it exists, sir, and nobody finds fault with it, unless some members of this Convention. Why should we, then, touch upon a subject that the people do not want us to approach? We have enough evils to remedy without trying to correct what is faultless. Man is a sociable being, and susceptible of perfection. He has certain wants to satisfy, and an intelligence to develop, consequently he has to progress; he has to think, to reason, to learn, and he has that superiority over the beast that he never stays stationary. The birds build up their nests to-day with the same class of materials that they did one thousand years ago; the bees construct their hives in the same manner that they did since creation. If beasts possess all their knowledge in coming to life, it is the contrary with man. He comes into this world without any knowledge, and it is only by education that he becomes the master of creation. If nobody teaches a child to read or write will he know it by instinct? I say no; therefore the necessity of education; and the more education man receives, the more learning he possesses, the more superiority he has over those more ignorant.

But the aptness of men is so different that it is impossible for any one to regulate it. How can you allow every one to develop their natural faculties if the study has to be equal and uniform for all? Why, gentlemen, we have not so far been able to equalize land taxation, and that we should try to equalize intelligence by rendering it uniform is a monstrous hypothesis. I know that the gentleman who offered this amendment in the Committee of the Whole argued the principle of economy, and the principle of Americanization, as the strongest theories in favor of his opinions. Why, consistency was a gift of the gods in old times, but I see that we will have to scratch that word from the dictionary. Is it on the ground of economy that the same gentleman, for whom I have great respect, wanted to pay high salaries to the judiciary? Is it on the principle of economy that he has advocated the establishment of the Railroad Commission? Why, in algebra, plus multiplied by plus gives less; well, plus of such economy by plus more of such will give less economy, consequently more expenses, and therefore it cannot be upon that principle that the author of such amendment can favor it. It must

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then be the principle of Americanism. Other gentlemen have also said that this was an American State, and that, as such, nothing but the American language should be taught in the government schools. Certainly, to prejudiced and narrow-minded men this would be the ne plus ultra of arguments; but I was astonished to hear of their being brought forward by the gentlemen that have done it. I say and maintain that such arguments are anti-American, anti-liberal, anti-social, anti-republican. They are anti-American—as I never knew yet a citizen of this great republic to be an enemy of progress. I never knew any yet who did not profess liberal and social principles. Anti-republican, because that very word is the companion of education; one cannot exist without the other. Who tried to destroy the Mexican Republic not long ago? Was it not ignorance, and sectarianism, and despotism? Who killed the last Republic in Spain? Was it not the same causes? Who, not two years ago, tried to stifle the French Republic? Was it not the same element? And I say, here in this State, who is the bitterest enemy of our public school system? Who tries to destroy it? The same element that has worked in those countries—ignorance, bigotry, and sectarianism. Are we going to surrender in our fight? Will civilization have to succumb? Have we to go backward? I say that such theories are anti-American. Do you want to Americanize by force, or persuasion? Why, gentlemen, take any foreigner that comes here two years after his arrival, and tell me if that man has not changed as day and night. Why? Because he come gradually to American principles. He is not forced, but he himself recognizes them as the grand principles of humanity, and he throws off those shabby, ignorant, bigoted, national principles and becomes a new man. What produces such reaction? It is the educational system; it is the republican institutions; it is the air of liberty that he breathes that changes him entirely. Therefore, as this clause is against all American doctrines, against all principles of liberty, against all social laws, against the welfare of the people and the Republic, I hope it will be stricken out, and that we will give as much margin to our educational system as it possesses to-day, and more if it is in our power; and I hope that Mr. Larue's amendment will be adopted.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. President: It is very seldom that I rise to inflict myself upon this Convention. I would much rather listen to men of superior wisdom and experience, to older gentlemen upon this floor. But, sir, in what has been said upon this subject I am sorry to say that the gentlemen have run far over the mark. I am in favor of striking out this clause, and I am governed by no national prejudice, for there is no German or French blood in my veins; but, sir, the question is whether the teaching of languages ought to be included in a common school education; whether the State ought to be taxed for the instruction of our children in the languages. Now, sir, it is my opinion that that ought to be the case; that in the study of the modern, and if you please the ancient languages, the student receives a better knowledge of his own. It is like studying the peoples of the various countries of the world. In doing so, and in returning to your own, you have a better conception of it. I spoke to General Howard concerning the very amendment he introduced here, and he said to me that he had no objection to having it stricken out. I do not believe, sir, that the student in studying the various modern languages of the world becomes less of a patriot. I do not believe that he has less love for the institutions of this country after he has studied the institutions of others. Rather I should say that he sees wherein ours is superior to others, and in so much he loves and worships his own the more.

I cannot see why this clause should be retained. It will strike a blow at all the cosmopolitan schools throughout the State. If it is not stricken out I should like to see an amendment put in that will leave it to the various counties, at least, to decide whether their children shall have the privilege of being instructed in the various modern languages. But I think that the State will not be the loser in a financial point of view in teaching its children the modern languages. This is exceptionally a cosmopolitan State. We can bring the foreign people of this State nearer to our own institutions by teaching them in connection with their own language the language of our country. I hope, sir, without any further remarks, that this clause will be stricken out.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I indorse the sentiment of the gentleman who last took his seat. I believe that the last clause of this section ought to be stricken out, and I have another reason for it; my reason is, that I think it is very proper that it should be left to the Legislature; that the idea of saying that, in the primary and grammar schools, no language but the English should be taught, is wrong, and that by laying it down as a rule for the next quarter of a century, would be unwise indeed; I would leave it to the Legislature. In San Francisco we have some cosmopolitan schools, and they work very well indeed, and the people are satisfied with them. San Francisco pays into the treasury, two thirds of the entire State school tax which is received from direct taxation. While the population of San Francisco is composed of almost every nationality, I think that it is highly proper to leave it to the Legislature; let the Legislature say, from time to time, whether they shall or shall not have cosmopolitan schools. We might just as well say that they shall not teach arithmetic. Why not say that algebra shall not be taught, and that surveying shall not be taught? I know many gentlemen who say that it is foolish to teach grammar; you might just as well say that English grammar shall not be taught in the common schools. You are selecting a class of studies that a great many people object to.

MR. TOWNSEND. Are you not aware that there are a very few such schools in the State? Why should San Francisco have special privileges?

MR. ESTEE. San Francisco pays for them. She pays eighty-five thousand dollars to support the schools in the country.

MR. BIGGS. How long would San Francisco exist without the other portions of the State?

MR. ESTEE. We could not unless we sent up to Butte County for some of its wheat. This is not a question of feeling, it is a question of propriety; it is a question of State policy; it is a question of right. Shall this Convention put into the organic law of the State, a prohibition against any class of education?

MR. BIGGS. Yes, put it in.

MR. ESTEE. No, it is wrong, it is contrary to the best policy of the State; and let me say to the gentleman from Butte, and to the gentleman from Mendocino, that it will cost this Constitution many a vote of as good men as there are in the State. My chief objection is, that you place in the organic law of the State, a prohibition against teaching a certain class of studies that is contrary to the best policy of the State; that it is contrary to the enlightened spirit of the age; that it is unjust and wrong, and I hope it will not be adopted; I hope you will leave it to the Legislature. You strike that out, and the Legislature can control it, and if a majority of the next Legislature, or the one following, does not desire to have any of the languages taught in any of the common schools of the State, they can say so; they have the control of the subject. Let us not put such an inhibition in the Constitution.

MR. BEERSTECHER. I would ask the gentleman from San Francisco, whether San Francisco has not been teaching the languages in its common schools for over fifteen years?

MR. ESTEE. About that I do not know. About the last ten years I know, personally, that they have been taught in the cosmopolitan schools.

MR. BEERSTECHER. Would this not change the whole theory of the educational system in San Francisco?

MR. ESTEE. Yes. In the high schools, so far as I know, they teach some of the languages. Scholars are prepared for the University there, and they ought to be so prepared.

MR. SCHELL. Do they teach the languages in the primary schools?

MR. ESTEE. I believe not, sir. It is a long time since I was there.

MR. SCHELL. Are you favoring teaching German, and French, and Spanish, in the primary schools?

MR. ESTEE. No, sir. I am not favoring teaching them anywhere, unless the Legislature says so; but I am not willing to have the Legislature bound down in this matter.

MR. SCHELL. Are you in favor of teaching the Chinese in the grammar schools?

MR. ESTEE. That depends on the teacher. If the gentleman wishes to teach I am in favor of it.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I hope the motion will not prevail to strike out the amendment as offered by Mr. Howard and adopted by the Committee of the Whole. I believe that the committee acted discreetly in adopting that amendment. I hold that the public schools of the State should lay the foundation for a good and thorough English education. I hold that we should recognize this fact, that we are, or should be at least, an English speaking people, and that the tendencies of the times are to promote a system of smattering education, a little of everything and nothing perfect or complete in anything. The education of children in the public schools has been spread over so much and so many studies that but very little is taught to perfection. The result is, a little smattering of Greek and Latin is obtained by those who cannot talk perfectly the English language—and a little German, a little French, and a little Spanish. I do not object to these accomplishments. They are grand accomplishments, and they are in many cases essentially necessary to the transaction of certain kinds of business. But I do not believe that a classical education should be provided for in the common school system. I hope that this amendment will be voted down. I favor a legitimate education. It is proper and legitimate that the State should educate her children in the English branches, and if the people desire a higher education it is their privilege to obtain it, and they can have the privilege of obtaining it in higher schools than the common schools of the State. I hope this amendment will be rejected.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I do not know what kind of an education the gentleman from Los Angeles refers to when he speaks of a legitimate education. It is a kind of education that I have not yet made the acquaintance of. As a member of the Committee on Education, and in the absence of the Chairman of the committee, who is unavoidably absent on account of sickness, if I could possibly get the attention for a moment, I would like—but there are so many committees in session in different parts of this hall, and I know the business they have in hand is so very important that the question under discussion will not receive much attention. If we could be fortunate enough to go into Committee of the Whole, and not into so many committees at the same time and place, we would be better off.

THE PRESIDENT. The Convention will come to order. Gentlemen will resume their seats. The gentleman from San Diego will proceed.

MR. BLACKMER. Mr. President: This clause which it is proposed to strike out simply prohibits any city, or incorporated town, or district from establishing a school with their own money and by a vote of the people of that locality, which will be corresponding in grade to a primary or grammar school, in which none but the English language shall be taught. I ask the gentlemen of this Convention to think for a moment whether we are ready to take that stand; to say that no division of this State shall have the right with its own money, and in the good sound judgment of the people that live there, to have a school where they may teach anything but the English language. This says, that in primary and grammar schools no language but the English language shall be taught. That is a broad and sweeping assertion, which covers all grammar and primary schools.

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MR. CROUCH. What does "high schools, evening schools, normal schools, and technical schools," mean?

MR. BLACKMER. The section allows the people to establish them if they wish; but primary and grammar schools are the very ones in which some people want the privilege of having other language than the English language taught. Now, we have given cities the power to regulate their own affairs, but when they come to their public schools—the schools that they may establish with their own money—then we say that if they are primary and grammar schools, they shall never teach anything but the English language in them. Now, while I agree entirely with a great many of these gentlemen, that we want a system of education that shall be broad and comprehensive, I do not believe that it is absolutely an essential thing that we should have a uniform system throughout the State. In fact, that is one trouble with our system. We attempt to educate every child up to the same standard. There is no room for development outside of it. We attempt to bring every mind that is brought under the control of the public school system on to a dead level, and the dead level is mediocrity. What we want is, if here and there a bright child is found, to step outside of the regular beaten track and educate them so that they will be shining lights in the world. We want these cities and these districts, if they wish to establish a school where they may teach other languages than the English language, to have the power to do so. Why, sir, there are plenty of men who will tell you that the best idea, and perhaps the first idea they got of the English language—of their own tongue—was what they got after they undertook the Latin. If there were no people in the State but Americans I would still take this ground; but when we look at the cosmopolitan inhabitants of this State, we are doing them a greater injustice than the injustice we are doing to ourselves. I hope that the common sense of this Convention will strike out that clause and let it stand as it was. Then there can be established in incorporated cities, or in towns, or other localities, if the people who are there desire it, these schools, in which those who are here from foreign countries, and those of our own people who desire to fit themselves for the very best positions there are in the country, will have an opportunity to get this starting point, and there should be that opportunity. I hope the clause will be stricken out.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I favor the striking out of the clause. In this cosmopolitan age, the languages form a necessary portion of a good education. There is one point, as regards this State, which I think bears upon this question with great force. This State is the Anglo-Saxon outpost of the great population to the south of us, which speaks a language different from ours. In the future it will be a popular question in this State to control the commerce of the vast populations which are to the south of us, and there is no manner in which we can more successfully obtain that control than by allowing our children to become conversant with the language which prevails among that people. I look upon the clause as it now exists in this section as a monstrous clause; as one that is illiberal in its character, and one which will prevent future Legislatures, if it should be found necessary, from enabling our children to branch out in this particular class of knowledge. Mr. President, we should not place a limit or a bound to the possibilities of education. We should not restrict our children to a course of study which will not reach the full fruition of all the knowledge which may be obtained. I would not place this iron-bound clause in the Constitution, because it may hereafter work great injury. I would rather leave it open to successive Legislatures, if it should be found necessary, to allow the children of this State to acquire any species of knowledge which it may be necessary for them to acquire. I hope, Mr. President, that the clause will be stricken out.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. President: I am in favor of an education, but I think that no education can be had that is greater and finer than an education in the English language. It is, sir, the language of literature and freedom from its inception down to the present time. I should have anticipated, going back two hundred years, to have found a different system, because two hundred years ago much of the literature of the world was locked in different languages—in the ancient languages. But, sir, at the present day there is not a history of a country on the earth, or an institution, that is not to be found in the English language, which is, of all the languages known now to this earth, the conquering language. It is a language that is as broad of compass, as deep and rich as any to be found upon the earth. This limitation here is only to the primary and grammar schools of this State; that in these schools nothing but the English shall be taught. It is the language of the country. It is the language of the common people, and it tends in itself to bring us all together as Americans, loving its literature, loving its institutions; whereas, if we put in the idea of our being a cosmopolitan people, there will be some other languages taught of which the child will get a smattering. We cannot teach them all. If it is right to teach French and German, it is right to teach Irish, and Italian, and Chinese, and Hebrew, and Greek, and Latin. When we find we cannot teach them all, let us compromise on the language of the country. Let those who desire to educate their children farther pay for it. I believe it is a wise rule, and it is fair to every class of foreign citizens.

MR. VACQUEREL. What is the use of writing that in Latin and not in English? [Pointing to the inscription over the President's chair.]

MR. LAINE. None whatever. Half of the members cannot translate it.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: It is my belief that it is over crowding the youth in teaching the foreign languages in the common schools. If the people want foreign languages taught in the schools, let them have it, but here a majority of the people take no interest whatever in teaching foreign languages, besides it is time to teach a foreign language when the child shall have attained that age sufficient for it to understand and appreciate the benefit derived therefrom. Now, sir, the section reads:

"SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools. In the primary and grammar schools no language but the English shall be taught."

Now, then, it should read as follows: "The public school system shall include primary and grammar schools. High schools, normal schools, evening schools, and technical schools may be established by the Legislature." Now, sir, I do not believe that it is just to the people, or that it is just to ourselves, to go and tax everybody indiscriminately for having a language taught in the public schools. I would give every child in California a University education if it were within our power, but I would not ask any man to contribute to giving my child such an education. Mr. President, is an amendment in order?

THE PRESIDENT. No, sir.

MR. DOWLING. Well, I have got an amendment I would like to offer, and it reads as follows:

"The public school system shall include primary and grammar schools. High schools, evening schools, normal schools, and technical schools may be established by the Legislature, or by municipal or district authority for such municipality or districts in which a majority of the parents or guardians, by a direct vote at a special election, may determine to support such schools."

In these technical schools they can teach foreign languages. It is time enough for a child to begin to learn the foreign languages when he has a pretty good knowledge of the English language. Besides, teaching foreign languages in the schools has a tendency to divide the children; has a tendency to nationalize the children; has a tendency to drive them away, and one part will be German, another part will be French, and another part will be English. Why might not the Irish demand that the Irish language be taught in the public schools?

MR. LAVIGNE. Can you show us an Irish dictionary?

MR. DOWLING. Yes. The Irish is a distinct language. It is a written language. I can read and write it as well as I can the English language. Now I believe that this amendment that I have read is the true rule; that is, allowing the people to establish their schools if they wish to, at their own expense.

Messrs. Hunter, Waters, Dunlap, Brown, and Morse, demanded the previous question, which was ordered by the Convention.

Upon the amendment of Mr. Larue, the ayes and noes were demanded by Messrs. Vacquerel, O'Sullivan, Brown, Beerstecher, and Hunter.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Harrison,	Schell,
Ayers,	Harvey,	Schomp,
Barbour,	Herold,	Shurtleff,
Barry,	Hughey,	Smith, of 4th District,
Barton,	Joyce,	Smith, of San Francisco,
Beerstecher,	Kenny,	Soule,
Bell,	Kleine,	Stedman,
Blackmer,	Lampson,	Stevenson,
Brown,	Larue,	Stuart,
Campbell,	Lavigne,	Sweasey,
Condon,	Lewis,	Swenson,
Cross,	Martin, of Alameda,	Thompson,
Doyle,	McCoy,	Tully,
Estee,	McNutt,	Vacquerel,
Farrell,	Morse,	Walker, of Marin,
Filcher,	Neunaber,	Webster,
Freeman,	O'Sullivan,	Weller,
Freud,	Rolfe,	Wellin—55.
Gorman,		

NOES.

Biggs,	Hilborn,	Pulliam,
Boggs,	Hitchcock,	Reed,
Boucher,	Howard, of Mariposa,	Reynolds,
Burt,	Hunter,	Rhodes,
Caples,	Johnson,	Ringgold,
Chapman,	Jones,	Shafter,
Charles,	Kelley,	Smith, of Santa Clara,
Crouch,	Laine,	Swing,
Davis,	Mansfield,	Tinnin,
Dowling,	Martin, of Santa Cruz,	Townsend,
Dudley, of Solano,	McCallum,	Turner,
Dunlap,	McComas,	Tuttle,
Estey,	McConnell,	Walker, of Tuolumne,
Evey,	Mills,	Waters,
Garvey,	Moffat,	West,
Glascock,	Moreland,	Wickes,
Graves,	Nason,	White,
Hager,	Noel,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wyatt,
Herrington,	Prouty,	Mr. President—60.

THE PRESIDENT. The question recurs on concurring with the Committee of the Whole in their amendment.

Upon concurring in the amendment of the Committee of the Whole,

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the ayes and noes were demanded by Messrs. Herrington, Condon, Weller, Joyce, and Beerstecher.

The roll was called, and the amendment was concurred in by the following vote:

AYES.

Biggs,	Howard, of Mariposa,	Reynolds,
Boggs,	Hunter,	Rhodes,
Boucher,	Inman,	Ringgold,
Burt,	Johnson,	Shafter,
Caples,	Jones,	Smith, of Santa Clara,
Chapman,	Kelley,	Stuart,
Charles,	Laine,	Swing,
Crouch,	Mansfield,	Thompson,
Davis,	Martin, of Santa Cruz,	Tinnin,
Dean,	McCallum,	Townsend,
Dudley, of Solano,	McComas,	Turner,
Dunlap,	McConnell,	Tuttle,
Estey,	Mills,	Walker, of Tuolumne,
Evey,	Moffat,	Waters,
Garvey,	Moreland,	Weller,
Glascock,	Nason,	West,
Graves,	Noel,	Wickes,
Hager,	Ohleyer,	White,
Heiskell,	Prouty,	Wilson, of Tehama,
Herrington,	Pulliam,	Wyatt,
Hilborn,	Reed,	Mr. President—64.
Hitchcock,		

NOES.

Andrews,	Freud,	O'Sullivan,
Ayers,	Gorman,	Rolfe,
Barbour,	Harrison,	Schell,
Barry,	Harvey,	Schomp,
Barton,	Herold,	Shurtleff,
Beerstecher,	Huestis,	Smith, of 4th District,
Bell,	Hughey,	Smith, of San Francisco,
Blackmer,	Joyce,	Soule,
Brown,	Kenny,	Stedman,
Campbell,	Kleine,	Stevenson,
Condon,	Lampson,	Sweasey,
Cross,	Larue,	Swenson,
Dowling,	Lavigne,	Tully,
Doyle,	Lewis,	Vacquerel,
Estee,	Martin, of Alameda,	Walker, of Marin,
Farrell,	McNutt,	Webster,
Filcher,	Morse,	Wellin—53.
Freeman,	Neunaber,	

MR. WELLER [before the vote was announced.] Mr. President: I change my vote from no to aye, for the purpose of moving a reconsideration.

THE PRESIDENT. The next question is on concurring in the recommendation of the Committee of the Whole to strike out section seven. The Secretary will read the section.

STATE BOARD OF EDUCATION.

THE SECRETARY read:

"SEC. 7. A State Board of Education, consisting of two members from each Congressional district, shall be elected by the qualified voters of the district at the first gubernatorial election after the adoption of this Constitution, who shall hold their office for the term of four years, and enter upon the duties thereof on the first Monday of January next after their election; provided, that such members first so elected shall be divided into two equal classes—each class consisting of one member from each district—and that the first class shall go out of office at the expiration of two years from the commencement of their term of office; and at each general biennial election, after such gubernatorial election, one member of such Board shall be elected from each Congressional district, so that one half thereof shall be elected biennially. The Superintendent of Public Instruction shall be ex officio a member of such Board, and President thereof."

The recommendation of the Committee of the Whole was concurred in.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section eight.

TEXT-BOOKS.

THE SECRETARY read:

"SEC. 8. The local Boards of Education, and the Boards of Supervisors and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers and the granting of teachers' certificates, within their several jurisdictions."

MR. HITCHCOCK. Mr. President: I move to strike out the words "and County Superintendents," in line two. I see, by looking over the old Constitution, that there is no provision in the Constitution for County Superintendents. I think that really they are unnecessary, entirely so. They only entail an expense of one hundred thousand dollars or one hundred and twenty-five thousand dollars on the State, without any benefit. We have now stricken out the State Board, and that has left local boards. I think that each district can just as well manage their own school matters as the State can, therefore I think that a County Superintendent is entirely unnecessary, and I hope that it will be stricken out. When the proper time comes, I shall move to strike out section three.

MR. LAMPSON. Mr. President: It seems to me that this is the most essential portion of the article. The duty devolves upon the Board of Supervisors and the County Superintendent, whose duty it is to examine teachers and see that they are qualified to teach. When we strike that out you leave it with the County Boards of Supervisors, and in some of our counties there are Supervisors who cannot read or write. When this is stricken out you will have no head to the examining board.

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

The amendment was rejected.

MR. MCCONNELL. I have an amendment.

THE SECRETARY read:

"Add 'subject to general legislative enactments.'"

MR. MCCONNELL. Mr. President: It will not be necessary to say anything upon that amendment; I think it will recommend itself to the general good sense of this Convention, and I hope it will be adopted.

MR. LAINE. Mr. President: It seems to me that will open the door to bring back the old system. We have got rid of this Board of Education, but that thrusts us back to the old system, whenever the Legislature desires to have it so.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope that amendment will be adopted. We have in each county set up a Board that is entirely independent of any central authority. Now, it should be the endeavor always in any system of school education to provide for keeping up and continually raising the standard of teaching, and any system that does not do that is doomed to destruction. There is no question about it. Now, what have we done? We have left it so that in every county of this State where there is a scarcity of applicants for teaching that the standard of teaching will be lowered, and there can be no other result. The Board will have the absolute authority to say what that standard shall be, and when the necessity comes upon them to find teachers to fill the positions and keep up their six months' school, that standard will be lowered of necessity; while in other counties, where there is a large supply of teachers, the standard will be kept up to what it is now. But the general tendency of the whole system will be to lower and degrade the standard of teaching. Now, there should be a general legislative enactment which should determine something in regard to the examination of these teachers and the granting of certificates. This Convention has decided to do away with the State Board of Education. I voted against striking that out, and I was very sorry to see it done, because, in my judgment, it is a need of our system. But if the Convention has determined to take that out of the system, it should by all means say that when these County Boards have control of granting certificates, it should be under general legislative enactments; not under a special law that will be made for one county, and another special law for another county, but a general law which shall determine how these examinations shall take place in all the counties, and what shall be the standard. Otherwise the whole system in regard to our teachers will be disintegrated. I hope the Convention will examine this carefully, and see how we have torn this whole system into pieces. I hope that this amendment will be adopted.

MR. LARKIN. Mr. President: The amendment of the gentleman from Sacramento would destroy all we have done in relation to placing the common schools under local control. It will again reinstate the old law. The gentleman from San Diego regrets much that we have effected the change in regard to the policy of the government of our schools. We have changed that policy, and this Convention declared, by a very decided vote, that they wanted no more of it. We have placed it under the local control of the counties, and that amendment will destroy all that we have done. I hope that that amendment, and all other amendments tending to centralize power, will be voted down.

Messrs. Waters, Tully, Ohleyer, Brown, and Biggs demanded the previous question, which was ordered by the Convention.

Upon the amendment of Mr. McConnell, the ayes and noes were demanded by Messrs. Blackmer, Brown, Condon, Barton, and Stevenson.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barry,	Filcher,	Reed,
Belcher,	Freud,	Rhodes,
Blackmer,	Hughey,	Rolfe,
Boucher,	Inman,	Schell,
Burt,	Lewis,	Shurtleff,
Campbell,	Martin, of Alameda,	Stevenson,
Chapman,	McConnell,	Thompson,
Charles,	McNutt,	Townsend,
Cross,	Nason,	Webster,
Davis,	Noel,	Weller,
Dudley, of Solano,	Porter,	Wickes—35.
Estee,	Pulliam,	

NOES.

Andrews,	Farrell,	Jones,
Barbour,	Freeman,	Joyce,
Barton,	Garvey,	Kelley,
Bell,	Glascock,	Kenny,
Biggs,	Gorman,	Kleine,
Boggs,	Hager,	Laine,
Brown,	Heiskell,	Lampson,
Caples,	Herold,	Larkin,
Condon,	Herrington,	Larue,
Crouch,	Hilborn,	Mansfield,
Dowling,	Hitchcock,	Martin, of Santa Cruz,
Doyle,	Howard, of Mariposa,	McCallum,
Dunlap,	Huestis,	McComas,
Estey,	Hunter,	Mills,
Evey,	Johnson,	Moreland,

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Morse,	Smith, of San Francisco,	Tuttle,
Murphy,	Soule,	Walker, of Marin,
Ohleyer,	Stedman,	Waters,
Prouty,	Stuart,	Wellin,
Reynolds,	Sweasey,	West,
Ringgold,	Swenson,	Wilson, of Tehama,
Schomp,	Tinnin,	Wyatt,
Smith, of Santa Clara,	Tully,	Mr. President—69.

THE PRESIDENT. The question recurs on concurring in the amendment of the Committee of the Whole.

The amendment was concurred in.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section nine.

SECTARIAN SCHOOLS.

THE SECRETARY read:

"SEC. 9. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction therein be permitted, directly or indirectly, in any of the common schools of this State."

Concurred in.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section ten.

THE STATE UNIVERSITY.

THE SECRETARY read:

"SEC. 10. The University of California is hereby declared to be a perpetual institution of this State, organized to administer a great public trust, and the Legislature shall have no power to impair or divert any gift, grant, or donation made to it from the purposes or objects of those making such gift, grant, or donation. Its officers shall hold office for such time as the Legislature may prescribe. Instructions shall be therein given, in addition to other matters, in agriculture, metallurgy, the mechanic arts, and applied sciences. It shall be entirely independent of all political and sectarian influences."

MR. WEBSTER. Mr. President: I offer a substitute.

THE SECRETARY read:

"SEC. 10. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight, and the several Acts amendatory thereof, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents and in the administration of its affairs; provided, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two, and the several Acts amendatory thereof, shall be invested as provided by said Act of Congress; and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one college of agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics,) to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Act of Congress; and the Legislature shall provide that if through neglect, misappropriation, or any other contingency, any portion of the fund so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished."

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. President: This amendment is in substance what was offered by me something like a month ago, which under a misapprehension on the part of a great many was voted against. It occurs to me, sir, that this secures the permanency of the University, and at the same time secures a compliance with the several Acts and donations to that University. It is secured in its organization and government according to the Act of eighteen hundred and sixty-eight. The first section of that Act reads:

"A State University is hereby created, pursuant to the requirement of section four, article nine, of the Constitution of the State of California, and in order to devote to the largest purposes of education the benefaction made to the State of California under and by the provisions of an Act of Congress, passed July second, eighteen hundred and sixty-two," etc.

This provides for a college of agriculture, a college of mechanics, and a college of mines and other matters. In the original Act it provided that eight of the sixteen Regents should be appointed by the Governor and confirmed by the Senate of the State, the other eight should be elected by the Board of Regents themselves. An amendment in the Code provides that: "the University is under the control of a Board of Regents consisting of twenty-two members; but the President of the University for the time being shall be a member of the Board of Regents by virtue of his office. Sixteen members of the Board are appointed by the Governor, with the advice and consent of the Senate. Their term of office is sixteen years. Six members of the Board hold by virtue of their offices as provided in section three hundred and fifty-three," which reads as follows: "The Governor, Lieutenant-Governor, Speaker of the Assembly, Superintendent of Public Instruction, President of the State Board of Agriculture, and President of the Mechanics Institute of San Francisco, are ex officio Regents of the University of California." It also provides in sections one thousand four hundred and forty-nine and one thousand four hundred and sixty-one in regard to the government of the University. This constitutes its organization and government. In regard to the donation of Congress it is provided for in substance, as is provided for in the Act of eighteen hundred and sixty-two. It provides also that in case of any loss or misappropriation that the State shall replace any such loss or misappropriation, so that the fund shall remain inviolate and undiminished forever. It is almost in the exact language of the Congressional Act, so I think there can be no objection to this. It secures the permanency of the University and at the same time secures a proper distribution, and that the funds shall be appropriated for the purposes for which they are donated.

MR. LAINE. Mr. President: I hope that this amendment will not be adopted. It is practically the same one that we disposed of in Committee of the Whole, after a long debate. I know that this Convention is not in a condition to listen to any talk; but I desire to raise one or two objections to it now. The Act of Congress is binding upon this State, having accepted the trust, whether we put it in the Constitution or not. It is idle to put it in there. It makes this first organization iron-bound, so that it cannot be changed in any way. We never could add a college or make any change whatever. In that it is vicious. The University should be forever under the control of the State; provided, however, that it should not be destroyed, and the section that we have adopted fixes it better for the University, in my judgment, than the other.

MR. WATERS. Mr. President: I think this is the third time that gentlemen have got up here and read this Act. I believe this Convention is ready to vote. I move the previous question.

Seconded by Messrs. Murphy, Tinnin, Biggs, and Tully.

The main question was ordered.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda.

The amendment was rejected.

THE PRESIDENT. The question recurs on concurring in the amendment of the Committee of the Whole.

Concurred in.

A TEXT-BOOK.

MR. LAINE. Mr. President: I desire to offer a new section that I think will be acceptable to this Convention.

THE SECRETARY read:

"Amend the article on education by adding a section thereto, to read as follows, viz.: 'SEC. —. The Legislature shall cause to be published, at the expense of the State, a book, of convenient size, containing the Constitutions of the United States and of this State; the Declaration of American Independence, and Washington's Farewell Address; and shall cause the same to be distributed, free of cost, to the children in the common schools, and to be used therein as a text-book.'"

MR. LAINE. Mr. President: It strikes me that this ought to be adopted. If there is anything in this State that our children ought to know, and know well, it is the Constitution and government of this country. Those who are in favor of an enlarged education, and in favor of an intelligent exercise of political rights, should favor this section.

MR. BEERSTECHER. I move to include Lincoln's Emancipation Proclamation.

MR. BROWN. I object.

MR. CROSS. I do not know what this amendment is offered for, but I think it may be for something serious. I move to amend by inserting "the autobiographies of all the members of this Convention."

MR. ROLFE. I suggest that we include the ten commandments and the Lord's Prayer.

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

PRINTING OF TEXT-BOOKS.

MR. O'SULLIVAN. Mr. President: I offer a new section.

THE SECRETARY read:

"SEC. —. The Legislature, at the first session after the adoption of this Constitution, shall provide for the appointment of a Commission to compile a series of school text-books, which, after preparation, shall be printed in the State Printing Office. The text-books thus compiled and printed shall constitute a uniform series of text-books, to be used in the public schools of this State on and after the first day of January, eighteen hundred and eighty-two, and shall be furnished to pupils at cost price."

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: There are two good reasons for the adoption of this amendment, and I ask the earnest attention of the delegates to the subject. First, the adoption of the system which I propose will completely destroy all motive or inducement to a lobby on the school book question. Once the State prepares and publishes its own school books, the corrupting influence attached to the private competition and speculation of the present system will be effectually prevented in the future. This in itself will be an excellent result, which I feel sure is desired by every good citizen. It is notorious that a disgraceful lobby influence assails the Legislature at every session. One set of corruptionists seek the adoption of new text-books, and another to retain the series in use. These lobbies were here in force around the last Legislature, and if it were not for their influence, it is not improbable that this school book question would have been settled at that session. Grove L. Johnson in the Assembly introduced a bill proposing exactly the method which is embodied in this amendment which I propose, namely: that the State should prepare and print its own text-books, and forever put an end to the disgraceful squabble between rival book houses and the corrupting influence growing therefrom. I call the attention of the Sacramento delegates in this Convention to the fact that the entire Sacramento delegation in the last Legislature advocated the adoption of this system—that the State should prepare and print its own text-books.

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The second potent reason for the adoption of this amendment is that it will prove a wise measure of economy, saving a large amount of money in the aggregate to the people, who have to buy school books for their children. Under this system which has been in vogue, the text-books used in the public schools of this State have been changed several times—I do not know how many times—through the corruption or prejudice of the State Board of Education, at great expense to the parents of this State at every change. If you confirm the system now proposed in section eight, as it stands, leaving it to the County Boards of Education to adopt text-books, for use within their respective jurisdictions, confusion worse confounded will result. There will be no uniformity, and additional expense will be piled on to parents who may chance to move from one county to another. I cannot, for the life of me, see how such a system can commend itself to any gentleman who will give the subject a moment's thought and unbiased consideration. One of the best reasons in the world why the State should undertake to do this work is the fact that we have a complete and well appointed printing office here in Sacramento where the State printing is now done, and which, since its establishment three years ago, has resulted in an annual saving of fifty thousand dollars, as compared with the cost of printing when farmed out. Here is the report of the Superintendent of State Printing, which shows that there is a saving of one hundred per cent. in the printing. So economy is established in that printing office. That printing office is lying idle most of the time between the sessions of the Legislature. Why not make use of it instead of enriching speculating book sellers? On December sixth, Mr. Thompson, Superintendent of State Printing, at the request of the Convention, furnished the following statement:

MR. PRESIDENT: In compliance with certified resolution from the Convention, dated December fourth, I have the honor to submit the following estimates. These figures are made upon the basis that the State possessed the text and copyright, and all the appliances necessary for doing such work. For the first one thousand, complete series, of a book in every respect equal to the Pacific Coast Readers, it would cost the State:

For composition	$449 06
For paper	352 90
For press-work	150 50
For binding	665 00
For engraving cuts	3,750 00
For electrotyping	568 80
Total	$5,936 26
Each additional thousand	$1,168 40

The cost of publishing a series, equal in all respects to the McGuffey Readers, would be, for the first thousand:

Composition	$489 61
Paper	267 50
Presswork	161 75
Binding	665 00
Engraving	3,500 00
Electrotyping	534 00
Total	$5,617 86
Each additional thousand	$1,094 25

I hold that this report demonstrates that this system would save fifty thousand dollars a year to the State, and it would destroy all incentive for the corrupt lobbying which has disgraced this State. There is this about printing our school books here, we shall be encouraging home industry in a most practical manner. The money now goes to eastern gentlemen, McGuffey & Co., who pay their journeymen printers Chinese wages. In our State office, fair living wages are paid. I ask gentlemen if they think it likely that there was anything wrong in this proposition, that it would have been advocated, as it was last Winter in this Capitol, by such honorable gentlemen as N. Greene Curtis, Creed Haymond, and Grove L. Johnson?

Messrs. Murphy, Biggs, Tully, Dean, and Brown demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. O'Sullivan, the ayes and noes were demanded by Messrs. O'Sullivan, White, Freud, Ayers, and West.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Garvey,	Smith, of 4th District,
Barbour,	Gorman,	Smith, of San Francisco,
Barry,	Harrison,	Stedman,
Barton,	Herold,	Sweasey,
Beerstecher,	Herrington,	Swenson,
Bell,	Joyce,	Tuttle,
Brown,	Kenny,	Vacquerel,
Condon,	Lavigne,	Walker, of Marin,
Cross,	Mills,	Walker, of Tuolumne,
Davis,	Nason,	Wellin,
Dowling,	Neunaber,	West,
Doyle,	O'Sullivan,	Wickes,
Farrell,	Reynolds,	White,
Freud,	Ringgold,	Wyatt—42.

NOES.

Andrews,	Crouch,	Hager,
Belcher,	Dean,	Harvey,
Biggs,	Dudley, of Solano,	Heiskell,
Blackmer,	Dunlap,	Hitchcock,
Boggs,	Estee,	Howard, of Mariposa,
Boucher,	Estey,	Huestis,
Burt,	Evey,	Hughey,
Campbell,	Filcher,	Hunter,
Caples,	Freeman,	Inman,
Charles,	Glascock,	Jones,
Kelley,	Morse,	Smith, of Santa Clara,
Laine,	Murphy,	Soule,
Lampson,	Noel,	Stevenson,
Larkin,	Ohleyer,	Stuart,
Larue,	Porter,	Thompson,
Lewis,	Prouty,	Tinnin,
Mansfield,	Pulliam,	Townsend,
Martin, of Alameda,	Reed,	Tully,
Martin, of Santa Cruz,	Rhodes,	Turner,
McCallum,	Rolfe,	Waters,
McComas,	Schell,	Webster,
McConnell,	Schomp,	Weller,
McNutt,	Shafter,	Wilson, of Tehama,
Moffat,	Shurtleff,	Mr. President—73.
Moreland,		

Upon the engrossment of the article, Messrs. Hunter, Larue, Dean, Waters, and Brown demanded the previous question, which was ordered by the Convention.

Upon the engrossment, the ayes and noes were demanded by Messrs. Joyce, Doyle, Barry, Cross, and Wickes.

The roll was called, and the article ordered engrossed for a second reading by the following vote:

AYES.

Andrews,	Herrington,	Reed,
Barry,	Huestis,	Reynolds,
Barton,	Hunter,	Rhodes,
Belcher,	Inman,	Ringgold,
Biggs,	Jones,	Rolfe,
Blackmer,	Laine,	Schell,
Boggs,	Lampson,	Schomp,
Boucher,	Larkin,	Shafter,
Brown,	Larue,	Shurtleff,
Burt,	Mansfield,	Smith, of Santa Clara,
Campbell,	Martin, of Santa Cruz,	Soule,
Caples,	McCallum,	Stevenson,
Charles,	McComas,	Stuart,
Crouch,	McConnell,	Thompson,
Davis,	McNutt,	Tinnin,
Dean,	Mills,	Townsend,
Dunlap,	Moffat,	Tully,
Estee,	Moreland,	Turner,
Estey,	Morse,	Tuttle,
Evey,	Murphy,	Walker, of Tuolumne,
Garvey,	Nason,	Waters,
Glascock,	Noel,	West,
Gorman,	Ohleyer,	White,
Hager,	O'Sullivan,	Wilson, of Tehama,
Harvey,	Prouty,	Wyatt,
Heiskell,	Pulliam,	Mr. President—78.

NOES.

Barbour,	Herold,	Porter,
Beerstecher,	Hilborn,	Smith, of 4th District,
Bell,	Hitchcock,	Smith, of San Francisco,
Condon,	Howard, of Mariposa,	Stedman,
Cross,	Hughey,	Sweasey,
Dowling,	Joyce,	Swenson,
Doyle,	Kelley,	Vacquerel,
Dudley, of Solano,	Kenny,	Webster,
Farrell,	Lavigne,	Weller,
Filcher,	Lewis,	Wellin,
Freud,	Martin, of Alameda,	Wickes—35.
Harrison,	Neunaber,	

MR. HERRINGTON [when his name was called].—I vote aye for the purpose of moving a reconsideration.

NOTICE.

MR. HERRINGTON. I hereby give notice that I will, on Wednesday, February nineteenth, move to reconsider the vote by which the Convention ordered to engrossment the article on education; also, to reconsider the vote by which the Convention adopted the amendment of the Committee of the Whole to section six, of the article on education.

LAND AND HOMESTEAD EXEMPTION.

THE PRESIDENT. The next article on the file is the article on land and homestead exemption. The Secretary will read the amendment of the Committee of the Whole.

THE SECRETARY read:

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

MR. CROUCH. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section —, by striking out the words 'a certain portion of,' in lines one and two."

MR. CROUCH. Mr. President: As it reads now, it says that the Legislature shall protect by law from forced sale, a certain portion of the homestead. I suppose the object is to protect a homestead, and not a portion of it. I think that amendment ought to be adopted.

MR. WEST. Will you accept an amendment, to insert "not exceeding five thousand dollars?"

MR. LAINE. Mr. President: I hope that amendment will not prevail, because the homestead is the place where the family lives and may be worth one hundred thousand dollars.

MR. LARUE. I move the previous question.

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Seconded by Messrs. Tully, Waters, Kelley, and Ohleyer.

The main question was ordered.

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

The amendment was rejected.

THE PRESIDENT. The question recurs on concurring with the Committee of the Whole in its amendment.

Concurred in.

LAND MONOPOLY.

THE PRESIDENT. There appears to be several additional sections here, printed as a supplement. The Secretary will read them.

THE SECRETARY read the additional amendments adopted in Committee of the Whole, and then the first one, as follows:

"SEC. —. The holding of large tracts of land, uncultivated and unimproved, by individuals and corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property."

MR. DOWLING. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section —— as follows: 'SEC. —. After the adoption of this Constitution, the State shall never grant or patent any more than three hundred and twenty acres of land to any one person, corporation, or association of persons. The acquisition of large tracts of unimproved land for the purposes of speculation, by any individuals and corporations, is dangerous to the well-being and prosperity of the State; and the Legislature shall pass laws abolishing land monopoly by defining the tenure thereof; and it shall empower the State Board of Equalization to levy a graduated tax on the land of persons, corporations, and associations of persons, in excess of six hundred and forty acres, whether cultivated or uncultivated, in proportion to its productive capacity.'"

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: We have been talking here for the last five months about monopolies, and of all the monopolies existing in California to-day, the land monopoly is the most grinding. The amendment I have sent up provides that hereafter the State can never grant or patent any more than three hundred and twenty acres of land to any one person, corporation, or association. Now the laws of the United States—the homestead law—has been so that no man can homestead over one hundred and sixty acres of the public domain. The only way we can get at this grinding monopoly, and these worst of all Communists, is by a system of graduated taxation imposed on all holdings in excess of six hundred and forty acres. That is what my proposition calls for. If a man cannot live on four hundred and sixty acres of land he had better starve. Again, sir, if we adopt this system, what will the consequences be? The consequence will be that these men who have immense tracts of land, such as gentlemen own in the San Joaquin and Sacramento Valleys, will sectionize it and sell it out in small quantities. Unless we adopt a system of this kind, I cannot see where land monopoly will stop. You say tax it equally. We have been working under equal taxation for the last three years, and still land monopoly is on the increase to-day instead of on the decrease. Now, gentlemen, there is nothing in this proposition but what is right, and just, and proper, and if we adopt it I have no doubt in the world but that it will be pleasing to the people.

The amendment was rejected.

MR. BARBOUR. Mr. President: I send up a substitute for the section.

THE SECRETARY read:

"Substitute for section ——, introduced by Mr. Van Dyke: 'SEC. —. The Legislature shall have power, and it is hereby made its duty, to pass laws to prohibit and prevent the monopoly of land by regulating the representation, use, and occupation thereof by restricting its tenure and possession, and to pass all necessary laws not in conflict with the Constitution and laws of the United States, to prevent the acquisition of large landed estates by persons or corporations.'"

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I am aware, sir, that the Convention wants to get done with its business, but I feel constrained to make a few remarks touching the passage of this measure. I offer it as a substitute for the one which was adopted in Committee of the Whole, and it is the same in principle. The one offered by Mr. Van Dyke contains a declaration, or the assertion, of a principle which seems to have been conceded by all the political organizations of this State, that land monopoly is a curse, and gently calling for its discouragement. Now, sir, the present proposition is one that no man, unless he takes the ground fairly and squarely that land monopoly is not an evil, can object to. In point of fact it does not augment the power of the Legislature at all over this subject. It will, however, make it the duty of the Legislature to exercise this power for the purpose of preventing the accumulation of large landed estates. It proposes to take no man's property. It proposes to interfere with no man's vested rights. There is, sir, a universal and growing demand throughout this State on the part of every one who studies the situation, that laws must be aimed at this monopoly, and that the legislative attention should be called specifically and directly to the evil, and whatever can be constitutionally and legally done by the Legislature touching the subject, in relation to these matters, over which it does possess jurisdiction, ought to be done. This, sir, is a sort of compromise, offered and intended as such. There are many gentlemen in this Convention who were strenuously determined to stand squarely upon the proposition of an absolute land limitation. Now, sir, we have not stood upon that. We have not contended for that. We have not made a direct and positive issue. We want this Constitution to succeed. We have made a great concession, only asking that the attention of the Legislature be specifically and positively called to the question, and that action upon their part be demanded. I hope the Convention will grant us this simple request. I hope that we can go hence and say to those who are opposed to land monopoly, we have given you an opportunity to go before the people and elect to your Legislature representatives who are in favor of exercising the power of the State for the purpose of correcting the evil, subject to the Constitution and laws of the land. There is no communism or agrarianism about this proposition. It is a simple, plain, American proposition, and it seems to me that it ought to be adopted, and that it will perhaps be satisfactory to the people as a step in advance on the demanded reform.

MR. TINNIN. You speak in your amendment of the Legislature regulating the representation of land. What do you mean?

MR. BARBOUR. We say, for instance, that every man must use his property in such a manner as not to injure his neighbors or the community. Now, the law of adverse possession is a law of representation. If you do not represent your land for five years, allowing another to stay there in possession, you lose it. That is the law of representation. An old miner like you ought to know what a law of representation is.

MR. WATERS. Mr. President: As there seems to be no disposition on the part of the Convention to debate this section, I shall avail myself of my privilege to say a few words upon it. Now, Mr. President, I think this section is most vicious in its principle. To say that the Legislature shall have a right to lay down rules for one citizen of the State as to how he shall use his property, when it does not conflict with any public policy, is wrong in principle. I care not how much political capital can be made out of a provision of this sort, it is vicious upon the face of it. I shall vote against it or any of its kindred, let the consequences be what they may. When you announce a principle of this sort, it is not limited to large tracts. It allows the Legislature to hamper a man even in his homestead or small tract of land. I do not think this Convention is prepared to adopt any such principle.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M. President Hoge in the chair.

Roll called and quorum present.

MR. MURPHY. I move that the special order be temporarily postponed.

So ordered.

A QUESTION OF PRIVILEGE.

MR. STUART. Mr. President: I rise to a question of privilege. I see, sir, in the Record-Union of yesterday, the eighteenth instant, in my absence there was quite a flurry among the politicians, and particularly with the Workingmen, upon the reading of my late speech on Chinese in the United States Senate, during the debate on the iniquitous bill restricting Chinese immigration. The gentleman from Humboldt, Mr. Barton, said "the speech of Mr. S. was an insult to this Convention and the people." If he alludes to the reading of it in the United States Senate, undoubtedly they will apologize by telegraph to him and his party. If it is to me, I will inform him, and all others of his party, that "truth will prevail." What I said was not answered then, nor since, and every intelligent gentleman on this floor who has resided in this State over one year knows that it is unanswerable. Every word is truth. I think it unnecessary to telegraph your resolution to the President of the United States to approve the bill, as he undoubtedly has read my speech. [Laughter.] My course on this floor has been strictly controlled by parliamentary courtesy, and I hope it will continue so until the cease of our labors.

MR. BARTON. Mr. President: I wish to set myself right. I again repeat that the speech delivered by the gentleman from Sonoma, and read in the Senate of the United States, is a gross misrepresentation——

THE PRESIDENT. The gentleman is out of order. No such remark is in order.

MR. BARTON. I claim the right to place myself right.

THE PRESIDENT. You cannot place yourself right by attacking a member of this body.

MR. BARTON. Then I will proceed and confine myself to the subject. I say that I have a right to use the language I did use, and, with your permission, I will try to justify my course. The gentleman says that most of them are of the foreign element, ignorant of the practical workings of our Government. I repeat again, that there being but one dissenting voice against the memorial——

THE PRESIDENT. The gentleman is not in order. He has no question of privilege. The question is on the amendment of the gentleman from San Francisco, Mr. Barbour.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President: It is not necessary for me to say more than a word on this question. All the delegates know that land monopoly exists in this State to a fearful extent; that a few men have grabbed hundreds of thousands of acres of the best land in this State, through illegal means, and hold it for speculative purposes. They also know that it would be better for the State to have this land divided into small parcels and given to actual settlers. The people of this State demand that we shall do something to relieve them from this curse, and if we do not do it the people will hold us to a strict accountability.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I am in favor of the principle contained in the proposed amendment, but not in favor of the matter of details stated therein. Of all the arguments used against interference in these cases, there is one expressed in the Constitution of our State, and I believe in every State in the Union that recognizes the Declaration of Independence and its language, in relation to the right to acquire, enjoy,

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and possess private property. The gentleman uses the word "representation," and I confess I am at a loss how to apply it. I believe the Legislature can take some action to remedy this evil, which, in my judgment, has not been magnified. But, sir, so far as we can constitutionally go, we have gone, except, perhaps, in one respect. We have declared that lands cultivated and uncultivated of the same quality and similarly situated, shall be taxed at the same value. When the article on revenue and taxation shall again come before the Convention I propose to offer an amendment that large tracts of land of the same quality, and similarly located, shall be taxed at the same rate per acre as smaller tracts. That is a provision which will, in my judgment, go a long way towards curing this evil. I propose to go for the principle without going into details.

MR. SMITH, of Fourth District. Why do you propose to do a thing indirectly, when you can just as well do it directly?

MR. MCCALLUM. You cannot attack the vested rights of any man. But when you tax his land at the same rate that you do any other piece of land of the same quality, and similarly situated, you don't directly or indirectly infringe upon any principle of government whatever. Unequal taxation has permitted these men to hold these tracts of land, but unequal taxation has been more the fault of Assessors than of the law. I am willing to support the principle of the amendment if the gentleman will strike out the details. If I have an opportunity I shall offer an amendment, that the Legislature shall pass all necessary laws, not in conflict with the Constitution and laws of the United States, to prevent the acquisition of large landed estates by persons and corporations, leaving out the ways in which it shall be done.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope the amendment will be adopted, because I think the Constitution ought to contain, if not a positive prohibition against the acquisition of land in large quantities, still a proclamation that it is against public policy, and should be discouraged. I think the gentleman from San Bernardino is very unfortunate in some of his statements in opposition to the amendment when he said that the State could not lay down rules as to how a man should use his property. It seems to me, that if he will look at the Code of Civil Procedure, he will find that he is mistaken. He said further, that this is a vicious principle. He had just as well undertake to say that the homestead and preëmption laws are vicious. He further says that this thing is not limited to large tracts. Why should it be limited to large tracts? Why not include town lots and forty-acre lots as well as large tracts. There have been rumors and rumors; among them is one that, once upon a time, the railroad company gave out an intimation, in the nature of a hint, that it would antagonize land monopoly unless it obtained the assistance of the landholders. We know what has been done since. Now, I don't accuse the gentleman from San Bernardino of anything improper, but he has certainly overlooked the fact in his opposition to the railroads, that their side is the side of the land monopolists.

MR. WATERS. Will the gentleman allow me a moment? I don't like to interrupt the gentleman while he is speaking, but I want to know what is the meaning of his remarks. Speak out. I want to know what your intimations are.

MR. REYNOLDS. Simply that the gentleman is inconsistent in opposing railroad monopoly while favoring land monopoly.

MR. WATERS. If we give the Legislature power to limit land tenure, they could say that no man should hold more than ten acres of land.

MR. REYNOLDS. The gentleman is assuming that the Legislature will seek to deprive a man of his property without just cause. Sir, if the gentleman himself chooses to go away and leave his homestead for five years, to an adverse party, does he not lose it? And is there any objection to such a statute? And why should he, under such a pretense as that, undertake to raise an inference that the Legislature will seek to enact laws that will deprive men of their property when it is properly used? I insist that the position of the gentleman against railroad monopoly and against land monopoly is inconsistent and cannot be explained.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I fully agree with Mr. Reynolds in the last part of his argument, that the condemnation of one kind of monopoly and the upholding of another kind is inconsistent. Now, the proposition here is to limit the right to own land, and that the Legislature shall control the use of it, and direct him how it shall be used. Well, now, that is exactly what we have done in other cases, and I shall hope to see my friends, the Grangers, subjected to the same process as to how they shall buy their farms and how they shall use them. They know more about other people's business than they do of their own, and I cannot see why the Legislature should not take their business in hand and do some regulating. I don't see why the Legislature should not direct how they shall use their lands, what they shall plant, when they shall plant, and what price they shall charge for the produce. It was all right with the gentleman from Tehama, when we were dealing with railroads. He is perfectly willing to regulate them, but when it comes to any legislation affecting his thousands of acres of land, then he kicks over the traces. Land monopoly is a thousand times worse evil than railroad monopoly. I admit that I would cut every man down to about twenty-five thousand acres. [Laughter.] I would be willing to vote for an amendment, if it could be done, that every man who owns no land be permitted to go and take up three hundred and twenty acres of unoccupied land, provided he would live on it and make a home. That would stop some of this clamor. I am not going to give the poor man sympathy with nothing else. I am willing to do something besides talk. I would stop their hungry mouths with bread. Let these clamorers have the land—there won't be a great many of them who will take it.

REMARKS OF MR. WILSON.

MR. WILSON, of Tehama. Mr. President: It seems that these gentlemen propose to legislate these men out of their property. They propose to do it by unfriendly legislation. That is what the gentleman from Alameda proposes. Now, I would like to know how he is going to do it, any more than we can regulate how much business he shall do, or how much money he shall have? I am utterly opposed to this thing of legislating the people's land away by men who live around the city, and who never pay a cent of taxes. I was opposed to giving it away as subsidies to great corporations, as has been done by the Republican party. The members on this floor seem to be actuated by a spirit of agrarianism and communism in this matter.

MR. DOWLING. How much swamp land do you own?

MR. WILSON. I don't know that I will ever get an acre. I have a lot filed on, but I don't know that I will ever get it.

MR. DOWLING. How much have you filed on?

MR. WILSON. Probably one hundred thousand acres; half the State. [Laughter.]

MR. DOWLING. I presume this State was not big enough, and so you ran over into Oregon?

MR. WILSON. Such laws as this would soon drive us all into Oregon.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Townsend, Moreland, Huestis, and Holmes.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the amendment of the gentleman from San Francisco, Mr. Barbour.

Messrs. White, Barbour, Condon, Joyce, and Smith of Fourth District, demanded the ayes and noes.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Freud,	Smith, of 4th District,
Barbour,	Gorman,	Smith, of San Francisco,
Barry,	Harrison,	Stedman,
Barton,	Herold,	Sweasey,
Beerstecher,	Herrington,	Swenson,
Bell,	Hughey,	Turner,
Condon,	Joyce,	Tuttle,
Cross,	Kenny,	Vacquerel,
Davis,	Kleine,	Walker, of Marin,
Dowling,	Lavigne,	Wellin,
Doyle,	Moffat,	West,
Farrell,	Nelson,	White,
Filcher,	O'Sullivan,	Wyatt—39.

NOES.

Andrews,	Holmes,	Ohleyer,
Belcher,	Howard, of Mariposa,	Porter,
Biggs,	Huestis,	Prouty,
Blackmer,	Hunter,	Pulliam,
Boggs,	Inman,	Reed,
Boucher,	Johnson,	Rhodes,
Brown,	Jones,	Rolfe,
Campbell,	Kelley,	Schomp,
Caples,	Laine,	Shafter,
Chapman,	Lampson,	Shurtleff,
Charles,	Larkin,	Soule,
Crouch,	Larue,	Stevenson,
Dudley, of Solano,	Lewis,	Stuart,
Dunlap,	Mansfield,	Thompson,
Estee,	McCallum,	Townsend,
Estey,	McComas,	Tully,
Evey,	McConnell,	Van Dyke,
Garvey,	McFarland,	Walker, of Tuolumne,
Glascock,	McNutt,	Waters,
Hager,	Mills,	Webster,
Harvey,	Moreland,	Weller,
Heiskell,	Murphy,	Wilson, of Tehama,
Hilborn,	Nason,	Mr. President—71.
Hitchcock,		

PAIRED.—Mr. Schell, no, with Mr. Reynolds, aye.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Division was called for, and the amendment was concurred in by a vote of 59 ayes to 36 noes.

LANDS TO ACTUAL SETTLERS.

THE PRESIDENT. The question is upon concurring with the Committee of the Whole in a new section which the Secretary will read.

THE SECRETARY read:

"SEC. —. Hereafter lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law."

MR. WYATT. Mr. President: I offer an amendment.

THE SECRETARY read:

"SEC. —. The public lands of this State shall hereafter be granted only to actual settlers, and in quantities not to exceed three hundred and twenty acres to each settler, and no land warrant, land certificate, or land scrip shall ever be issued or sold by this State or by authority thereof."

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SPEECH OF MR. WYATT.

MR. WYATT. Mr. President: Under the section reported by the Committee of the Whole, this limitation is made to apply only to lands suitable for cultivation. If these words are left in, the lands belonging to this State, from the cheapest salt marsh and tide lands up to the highest priced swamp lands, will be taken up by speculators and not by actual settlers. For instance, the Legislature has to enact laws by which swamp land is to be taken by the State. Parties have come here and taken, under the Swamp Land Act, at one time, twenty thousand acres, and then come back at the next session and asked the Legislature to make an appropriation for irrigating the land, because it could not be cultivated without irrigation. Now I ask you what standard can you set up for land to be cultivated? The highest mountain peaks have been taken as swamp land, and the lowest, wettest, and best land in the valleys has been taken under the Desert Land Act. What law can you pass that will be equal to the elasticity of the consciences of these perjurers and land grabbers? There is but one safe rule, and that is that lands shall be taken from this State in small quantities and by actual settlers. That is the only way to cut them off. The land laws of the State ought to be as well settled as the law that a criminal has the right of trial by jury; and the test ought to be as plain as to whether the land has been severed from the public domain, as that the criminal cannot be tried without a jury. It ought to be as cardinal as that representation and taxation go together. Then, gentlemen, I hope that this amendment will prevail. You say all the lands of this State have been taken. I know that a great many of the sixteenth sections have been taken by speculators, and so long as we allow this system to prevail they will continue to be taken in the same way. Just so long as land scrip is issued by the State, this system will be followed up. I ask you, then, to cut off this system of issuing land scrip. Cut off the issuing of these warrants and make the test one that is honest, straight, and fair—that when a man occupies public land of this State for a certain length of time he can acquire title, and not otherwise. Therefore I ask you, in the interest of the rising generation of boys and girls of this State, to give them a chance to get public lands belonging to this State, and that they shall not have to go to some great land grabber and buy the privilege. Such a policy will enhance the wealth and increase the population of this State. I hope, therefore, that the amendment will be adopted.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: There is one fatal objection to this amendment; it interferes with the right of alienation. Of course it is easy to make a speech about land monopoly, and yet I do not apprehend that this Convention proposes to give away what land there is left. I apprehend that we do not propose to give away the donations made by the General Government.

MR. CROSS. This does not say anything about donations.

MR. ESTEE. His amendment says they shall never be sold. No certificate or warrant shall ever be sold by this State. Am I right?

MR. WYATT. No land scrip shall be sold.

MR. ESTEE. That is just as I understand it. That limit that a man shall be an actual settler, and shall only buy three hundred and twenty acres, is all right. It ought to have been made years ago. But now the State has only two or three classes of land—school land, University land, and swamp and tide land. Now, those are the lands granted to the State. They belong to the State. It may be well enough to limit the sale of State lands to actual settlers in quantities of three hundred and twenty acres of cultivatable land. Let the settler have the first right to buy the land. That I presume the gentleman wants to secure. But the idea that the State shall never issue or sell any school warrants might deprive us of the balance of the school lands donated by the General Government in the shape of sixteenth and thirty-sixth sections. I therefore hope the amendment proposed will not pass. The original section seems to me to be all that is required. It reads as follows:

"Hereafter lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law."

The gentleman can strike out these words, "suitable for cultivation," if he wants to. There are thousands of acres of this land that are utterly worthless except for grazing purposes, as everybody knows; and it seems to me that this condition ought to remain in.

MR. VAN DYKE. Are there any tide lands undisposed of in this State?

MR. ESTEE. I do not know, I presume there are. But I do know that if you cannot sell any of these school land warrants, that it will deprive the State of the remainder of the school fund. We have a right to sell the sixteenth and thirty-sixth sections and put the money in the school fund. The whole thing will be mixed if this amendment is adopted. I would take the old section in preference to the one proposed.

MR. LAINE. Mr. President: I will call attention to the grants of Congress of lands for college purposes. The other States are allowed to issue scrip, locatable anywhere, in case they have no land. If we say our own State shall not issue any scrip, we deprive ourselves of our own land, and it will be taken up by foreign scrip.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: There is a great misapprehension here in regard to scrip. There has never been any scrip issued by the State of California, except for the five hundred thousand acre grant. There has not been any scrip issued for fifteen years. What the gentleman calls scrip is not scrip. As far as the State is concerned there is no such thing as State scrip, and no law for it. Scrip has reference to United States land. This amendment would work very injuriously, and is entirely unnecessary. With reference to the suggestion about striking out the words "suitable for cultivation," I put in that language at the instance of many gentlemen who are very familiar with this business. In the mountains, and even in the valleys, there are places where the lands are not fit for cultivation. I believe there are in Sacramento County a few sections that are not located. I know there was a few years ago. They are not suitable for cultivation. They might be suitable for pasture, and some of them are scarcely suitable for that. There are eighty million acres yet to survey in this State. Many of these school sections will fall in the mountains, where the land is not suitable for cultivation. Now the present law limits the amount that one man may apply for to three hundred and twenty acres, but the spirit of the law is evaded, because there is no provision for actual settlement. There is nothing to prevent one person from taking up all these school sections. By the dummy system there is no limit to the amount of land which one man may acquire, because there is nothing said about actual settlement. Now, as to these lands which are not fit for cultivation, three hundred and twenty acres would be no object to persons who might desire them. The effect would be in many cases to leave the school sections unsold entirely, where otherwise persons living in the neighborhood would be perfectly willing to take the land and pay for it. It would work badly in such cases. There is no doubt there has been a vast amount of perjury as to the quality of these lands, but it is utterly impossible for us to make any regulation in regard to that matter. That depends upon testimony. The fact may be this way or that way. They are to be tried as any other questions of fact. I hope we shall adopt the section as reported.

MR. REYNOLDS. In the section last adopted, I was paired with Mr. Schell. He would vote no, and I would vote aye. I voted aye when I had no right to, and I ask leave to have the Journal corrected to that effect.

So ordered.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Monterey, Mr. Wyatt.

The ayes and noes were demanded by Messrs. Wyatt, Barton, White, Barbour, and Condon.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Gorman,	Ringgold,
Barbour,	Harrison,	Smith, of 4th District,
Barry,	Herold,	Smith, of San Francisco,
Barton,	Herrington,	Soule,
Beerstecher,	Hughey,	Stedman,
Bell,	Joyce,	Sweasey,
Condon,	Kenny,	Swenson,
Cross,	Kleine,	Tuttle,
Davis,	Larkin,	Vacquerel,
Dowling,	Lavigne,	Walker, of Marin,
Doyle,	Moffat,	Wellin,
Evey,	Nelson,	West,
Farrell,	Neunaber,	White,
Filcher,	O'Sullivan,	Wyatt—44.
Freud,	Reynolds,	

NOES.

Andrews,	Huestis,	Pulliam,
Belcher,	Hunter,	Reed,
Biggs,	Inman,	Rhodes,
Blackmer,	Johnson,	Rolfe,
Boggs,	Jones,	Schell,
Boucher,	Kelley,	Schomp,
Brown,	Laine,	Shafter,
Campbell,	Lampson,	Shurtleff,
Caples,	Larue,	Smith, of Santa Clara,
Chapman,	Lewis,	Stevenson,
Charles,	Mansfield,	Stuart,
Crouch,	Martin, of Alameda,	Swing,
Dudley, of Solano,	Martin, of Santa Cruz,	Thompson,
Dunlap,	McCallum,	Tinnin,
Estee,	McComas,	Townsend,
Estey,	McConnell,	Tully,
Garvey,	McFarland,	Turner,
Glascock,	McNutt,	Van Dyke,
Hager,	Mills,	Walker, of Tuolumne,
Harvey,	Moreland,	Waters,
Heiskell,	Morse,	Webster,
Hilborn,	Nason,	Weller,
Hitchcock,	Ohleyer,	Wilson, of Tehama,
Holmes,	Porter,	Mr. President—74.
Howard, of Mariposa,	Prouty,	

MR. WEBSTER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by striking out the words, 'which are suitable for cultivation.'"

MR. WEBSTER. Without this amendment the section, as it now stands, amounts to nothing, because land will be entered upon the ground that it is not fit for cultivation.

MR. LAINE. Mr. President: I hope the Convention will go slow on this matter, because it is dangerous. The State owns no land except what she acquires by virtue of her sovereignty under the Swamp Land Act. As to the sixteenth and thirty-sixth sections the State has no absolute title; because, if any of them are settled upon, the State can not get them. The only way the State can get these lands, is by application to the United States. It must be selected and listed. The State does not own it. She acquires it from the United States. If one of these

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sections is found in place upon survey, and no preëmption upon it, then it belongs to the State.

MR. WHITE. Mr. President: I cannot understand the point which the gentleman makes. The provision here is to go to actual settlers only. I trust this section will be adopted as amended.

MR ROLFE. I believe this State has some tide lands. If this amendment is adopted, no tide land can be sold except to actual settlers, and some of them cannot be very well settled upon; the result would be that they could not be sold.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Stuart, Townsend, Smith of Santa Clara, and Laine.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Alameda.

Lost.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Division was called for, and the Convention concurred in the amendment by a vote of 75 ayes to 21 noes.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section —.

THE SECRETARY read:

"SEC. —. No perpetuities shall be allowed except for eleemosynary purposes."

MR. HAGER. Mr. President: I move to strike it out.

THE PRESIDENT. The question is on concurring, which will accomplish the same object.

MR. SMITH, of Fourth District. Mr. President: I offer a substitute for the section.

THE SECRETARY read:

"No person shall hereafter acquire by purchase, gift, or device, more than six hundred and forty acres of land in this State."

THE PRESIDENT. Not in order.

MR. ROLFE. Mr. President: This is a section of which I am the author, but there is a section in another article identical with this, and therefore this might as well go out.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

The Convention refused to concur.

THE PRESIDENT. The question is: Shall this article be ordered engrossed and read a second time?

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Webster, McConnell, Van Dyke, and Huestis.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on ordering the article engrossed and read a second time.

So ordered.

SPECIAL ORDER—CITY CHARTERS.

THE PRESIDENT. The question is upon section nine, of the article on city, county and township organization. The Secretary will read:

THE SECRETARY read:

"SEC. 9. Any city may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others."

MR. BARBOUR. Mr. President: I move to strike out the word "freeholders," in line three, and insert "electors." Freeholder is an old fashioned term, and is against the spirit of the bill of rights.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I hope the amendment will not be adopted. I think the word freeholder should remain there. I think the person should be a permanent resident so as to have the confidence of the community.

MR. BARBOUR. May there not be heavy taxpayers in San Francisco who are not freeholders.

MR. ESTEE. There may be very good men who do not pay any taxes. I do not pretend to say that there are not just as good men among those who are not taxpayers as there are among the taxpayers. Yet, in selecting men to frame an organic law for a city, we should select men who are well known in the community, and we would be more apt to find them among freeholders than among any other class. These men are to control the destinies, to a certain extent, of a great city; they are to frame a charter for three hundred thousand inhabitants, and they should be selected from among the best minds in the city. I therefore appeal to this Convention not to allow the words to be stricken out.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I call the attention of the gentleman to section twenty-four of the preamble and bill of rights, as adopted at the last consideration of the article: "No property qualification shall ever be required of any person to vote or hold office." Now, sir, what else is this than a property qualification? It is provided that there shall be a qualification of five years residence in the city, and it seems to me that ought to be sufficient. If the electors choose to send a man to perform this work who does not own real estate, I think they should have a right to do it. I hope the amendment will prevail.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: This is a very small matter. Had it not been in the Missouri Constitution perhaps I would not have put it there. It is not in conflict with other portions of the Constitution, because it is all one instrument and must be taken together. That is, no property qualification shall ever be allowed except as provided in the instrument itself. I believe in framing an organic law that you should select citizens who themselves have something at stake—something to look after. If a man has a little homestead where his family are, he has something to look out for—something to protect—and in that respect there is more safety in taking men from that class of the community. When the charter is framed every man in the city comes forward and votes on it. There is no prohibition in that respect. But in the mere framing of it, I can see no objections to allowing the word to remain. I was going to offer an amendment to meet the wishes of some who think this is too vast a power to be placed in the hands of the people of San Francisco, and that the charter so framed should be ratified by the Legislature. As soon as this amendment is disposed of I shall offer an amendment to that effect.

MR. SHAFTER. Mr. President: I hope these words may not be stricken out. It may be that a man who has been in the country a year, knows all about the wants and necessities of the people, but I prefer to trust men who have acquired an interest in the community.

MR. REYNOLDS. Mr. President: I hope the amendment will be adopted, because this qualification will accomplish nothing. Now, the gentleman from the Fourth District might be a very competent person to sit upon that Board, though he might not own a foot of land. On the other hand, I would be a very unfit person though possessed of any number of town lots. It is a question of the fitness and character of the individual, and not the fact of his happening to invest his money in real estate. A man may own a lot somewhere that would qualify him to act under this provision, and yet he may not be able to write his own name.

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

Lost.

MR. HAGER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out, in line fourteen, 'at the end of sixty days,' and insert, 'be submitted to the Legislature, and if approved by a majority vote of the members elected to each House, it shall.' Line twenty-nine, after 'thereat,' insert, 'and approved by the Legislature, as herein provided for the approval of the charter.'"

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: The whole purpose of this article has been to take from the Legislature the power of special legislation, which we all admit is necessary. It was my intention, as far as I am concerned, to allow the counties to take care of their own affairs; to allow them to say whether the county should be divided or not, and thus cut off the log-rolling around the Legislature by men who are scheming for the offices. One man wants to be County Judge, another Sheriff. We all know that oftentimes a new judicial district has been created because some popular politician wants the position of Judge. That has been done again and again. I know it from my own experience as a legislator. Now these are ideas which have been indorsed by all the recent Conventions. When a man builds a house, if he does not adopt all the modern improvements he has an unsalable house. If we fail here to adopt the improvements which have been made in government during the last fifteen years, we will be behind the age. In former times the legislative power was unrestricted. But since that it has been found necessary to place restrictions upon the Legislature. It is the policy now to give the people more direct control, and take away

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from the Legislature the power to pass special laws. That is the platform on which we of San Francisco were elected. There is no provision in this article that has been criticised by the press or otherwise, but what is to-day in the platform which was adopted by the party, and sustained by the very papers which to-day are assailing this article--not assailed because it is wrong, but because that it is the intention to take San Francisco out of the State. Now, it will not admit of any such interpretation. The very first part of the section says, a city may frame a charter, subject to the Constitution and laws of this State. It must be subject to general laws, and those general laws may be just as stringent as the Legislature shall see fit to make them. There never was any idea of secession. There never was any thought of setting up an independent government. San Francisco is subordinate to the laws of this State by the very terms of this section. As far as I am concerned, in making this report, I have tried to adhere to my pledges. The Convention must not lose sight of the fact that we have already taken from the Legislature the power of special legislation. We are, therefore, dependent upon general legislation, general laws, and we must frame our Constitution with reference to it. That being so, we must provide some means for the government of cities. Suppose you strike out section nine, how is the City of San Francisco, or any other city, going to have a charter. There is no way provided except in this section. Look at the laws of this State, and you will find stacks upon stacks of Acts conferring additional powers upon the Boards of Supervisors. The taxes of that city are greater than any other city in the United States, or in the world; yet, gentlemen want to pile them up higher still. You must recollect that they are not all rich men. There are poor people there who have their little homes, and it is very hard for them to pay three or four per cent. taxes—just as hard as it is for you gentlemen who live in the country. We must put a stop to it or it will end in bankruptcy. In the last ten years you have trebled the municipal debt in the United States. In the next ten years it will be trebled again; and perhaps before that time it will be greater than the national debt. I have offered this amendment in order to meet the criticisms which have been made. I have some other small amendments to offer to further perfect the article, if I am not cut off by the previous question.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I hope the amendment will pass. As this section stands, it proposes to give to the cities of this State what I conceive to be the most dangerous powers, without any check, without any restrictions. It proposes to give to the cities of this State the actual power to repeal the existing laws of this State. Let us look at the thing. After stating, if the qualified electors approve of it, it shall become the organic law thereof, and supersede the existing charter, and all amendments thereto, and all special laws inconsistent with such charter. In other words, the laws of the State of California, without the action of the State of California, may be repealed by the City of Oakland or the City of San Francisco. I do not believe it is safe to trust any such power as that in the hands of any city in this State. It would be absolutely placing the city beyond the power of legislative control. Now, while I do not believe that the Legislature should interfere in the concerns of a city affirmatively, while I think they ought to be left to the judgment of the people of a city, yet at the same time, I believe that we ought to retain in the Legislature a preventive, conservative power, which will prevent the city from injudicious legislation in the shape of a charter. When a proposition is made to repeal the laws of the State, I think the State at least ought to be consulted. Further, there is this idea connected with the matter, and that is, that the charter may be gotten up and passed hastily, at a time of public excitement, which will open the way for a very mischievous government. If that were done there would be no way of reaching the people; it would be beyond the power of the Legislature to help them. Now, while I should prefer that cities should be organized under general laws, yet, if a different system is to be adopted, it should be under a certain amount of legislative restriction. Abuses and corruptions may creep in, as was the case in the City of New York, where the Legislature had to step in and exercise its preventive power.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: This amendment meets my most hearty approval. Without it, I should vote against section nine. I do not believe that the City of San Francisco is an independent sovereignty. I believe the State is so largely interested in the way of commerce, that the State power should have control in a large degree of the affairs of that city. I do not believe that it would be wise or just for this Convention to adopt a rule by which that city might place itself entirely outside of the control and jurisdiction of the Legislature. I feel sure that the amendment will commend itself to the favorable consideration of the best business interests of San Francisco. I am sorry that the people of San Francisco are not willing that the Legislature should exercise paternal control over them. The committee of fifteen, as laid down here, will frame a charter. That charter will be submitted to a vote of the people, and then the Legislature will have only this control over it. They can say whether the charter shall be adopted or rejected.

MR. HAGER. Allow me—there is one mistake made which I want to correct. The Legislature will always have control, because the charter must be subject to general laws. By general laws they may repeal the charter.

MR. ESTEE. I understand the point which the gentleman makes, but I disagree with him on the effect of it. If the Legislature passed a law repealing the charter, that would be a special law, and therefore unconstitutional. I am not in favor of placing the City of San Francisco beyond the control of the Legislature of this State. I therefore hope this amendment will be adopted, with such other amendments as are necessary.

MR. VAN DYKE. Mr. President: I hope the amendment will be adopted. It removes many of the evils pointed out when this matter was under discussion in Committee of the Whole.

MR. MCCALLUM. Mr. President: I cannot see that there is any real necessity for section nine. Section six is all that is necessary.

"SEC. 6. The Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns; and cities and towns heretofore organized or incorporated may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith."

When the motion to strike out section nine failed I then moved to strike out the classification as to one hundred thousand inhabitants, at the same time saying I was opposed to the section. There is no necessity for it.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope that amendment will not be adopted. That is an abandonment of the whole principle of self-government. Now, sir, this section has been the subject of a great deal of criticism and misrepresentation on the part of some of the press. For those who have made it their business to malign this Convention I have no respect. For the fair, honest criticisms I have every respect, and to such I pay attention. Now, sir, the whole intent of this section has been misrepresented. It is either misunderstood, or willfully misrepresented. It is nothing in the world but the ordinary, plain, simple doctrine of self-government, applied to the people of San Francisco. I admit that the section as amended may be vicious, applying to every city in the State. There was no necessity for it except in the case of San Francisco. It does not throw San Francisco out from under the control of the State, and no man whose opinion is worth respecting will assert anything of the kind. The line of demarkation is just as plain as the authority by which we are sitting here and framing a Constitution, subject to, and in harmony with the Constitution and laws of the United States. It is nothing but a system which will allow the State to Act upon matters of State concern, while the localities regulate local matters. That is all there is of it. When you propose that the charter shall be subject to the action of the Legislature, you leave it at the mercy of a hungry lobby. The charter comes up and it gathers the lobby around again. If an amendment is adopted at any time to the charter, it must go to the Legislature, and you gather the lobby around again. No, sir, it will never do. It will place us at the mercy of gas and water corporations, who will wield a powerful lobby to defeat any reform measures which we may adopt. I am opposed to the amendment, and I hope it will be voted down.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: If the Legislature is to pass upon the charter, it should pass upon it before its submission to the people of San Francisco. Let them reject or approve it as a whole; not allow the Legislature to alter or amend it. I am in favor of some check upon the city, but I believe that the check ought to be in this way: After the convention of fifteen has worked out a charter, let it go before the Legislature to be approved or rejected as a whole. Why go to the trouble and expense of voting on it, and then bring it to Sacramento for the lobby to work on? If the Legislature is to have power to amend it, then we might as well give the whole thing over into the hands of the Legislature at once, and let them frame a charter; there would be no use of putting the city to the expense of voting upon it, but frame the instrument and submit to the Legislature first as a whole; in that way it would be a check.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I am opposed to the amendment because it proceeds upon the theory that the people of San Francisco are bent upon self-destruction, and the only way in which that dire result can be averted is to submit the charter to the Legislature. Now, sir, it is the habit of the people of San Francisco to point with pride to their charter, but it is not their habit to point with pride to the one hundred supplemental Acts passed by the Legislature—they might as well be denominated one hundred raids upon the taxpayers of San Francisco, or one hundred steals out of the treasury. Were they adopted by the people? Were they asked for by the majority of the people of San Francisco? By no means. Were they not adopted by the people? Were they ever defeated by the Legislature? Never one. There is not a gentleman within the sound of my voice who ever knew of an amendment to the charter being defeated by the Legislature; nor did the country members ever come to the rescue of San Francisco—if they did, when? I pause for a reply. When have the people ever voted to injure themselves?

MR. ESTEE. In eighteen hundred and sixty-four, when the people of San Francisco voted a million dollars as a subsidy to the railroad company.

MR. REYNOLDS. I defy any gentleman to name a single instance where the country has ever saved the city. One gentleman in his wisdom speaks of the harbor of San Francisco. Does he not know that the harbor is under control of the Federal Government? Does he not know that charter rights pertain to police regulations within the city, and that alone? Hence, it is useless to talk about the city being saved by the Legislature. It is absurd. If there were any examples to refer to, there might be something in the argument, but, as it is, it is absurd.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: If this amendment is adopted I shall oppose the entire section. As it is now, it applies to all the cities in the State, and I am not disposed to have every small city in this State, when it wishes to adopt a new charter, or to amend its charter, to be subjected to the lobbies and the Legislature. It contravenes the entire system

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which we have attempted to adopt with reference to local self-government. If gentlemen will confine this section to cities of fifty thousand or one hundred thousand inhabitants, I will vote for any amendment which they may offer.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I hope the amendment will prevail. Every citizen in this State has an interest in San Francisco, and a large number of the inhabitants of this State own property in San Francisco. To say that San Francisco, or Oakland, or any other city, shall make a charter which cannot be revoked by the power of the State, is something that I will never consent to. Now, the men selected will frame a charter. It will be submitted to the people who will vote on it. If they express themselves in its favor it will go before the Legislature. If it does not contain any provision injurious to the State at large, there is very little doubt but what, with such a recommendation, it will be indorsed, and will become the charter of the city.

MR. LAINE. Mr. President: I think this whole scheme is vicious and dangerous. There is no necessity for it. It is all provided for in section six, and that is sufficient. Here is a bill that effects the whole State. There is no locality about it. This system is vicious, and there is no good in it from top to bottom.

MR. STEDMAN. Mr. President: I concur in the remarks of Mr. Beerstecher. I desire to read, for the information of the Chairman of the committee, an amendment which I shall offer. Insert, after the word "Legislature," where it first occurs in the amendment: "for its approval or rejection as a whole, without power of alteration or amendment."

MR. HAGER. That is the intention of my amendment, but I have no objection to making it more emphatic. I will accept the amendment.

THE PRESIDENT. The question is on the adoption of the amendment as amended, offered by the gentleman from San Francisco, Mr. Hager.

Adopted.

MR. MURPHY. I move that the Convention take a recess until seven o'clock.

Division was called for, and the motion lost by a vote of 55 ayes to 56 noes.

MR. CAMPBELL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add at the end of the section: 'the Legislature may at any time abrogate such charter or any part thereof.'"

MR. CAMPBELL. Mr. President: If this term "organic law" means anything, it means a law which cannot be changed by the ordinary course of legislation. Our Constitution is the organic law of the State, and the Legislature cannot change it. It is said that the charter must be consistent with and subject to the general laws of this State. That is all right as far as it goes. But when it is so framed it becomes the organic law of the city. Now, we have the further provision that the Legislature must reject or approve it as a whole. If abuses should creep in under it, and it should be found not to work well, there is no power in the Legislature to do anything, because they have ratified it as a whole, and it has become the organic law of the city. Now, sir, this amendment is designed to guard against such a state of things. It can do no harm, and it may prove a very great good.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Stuart, Waters, Lampson, and Tuttle.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Alameda, Mr. Campbell.

The ayes and noes were demanded by Messrs. Reynolds, Barbour, Condon, Joyce, and Doyle.

The roll was called, and the amendment rejected by the following vote:

AYES.

Boggs,	Laine,	Rhodes,
Boucher,	Lampson,	Rolfe,
Burt,	Larue,	Schell,
Campbell,	Lewis,	Schomp,
Chapman,	Mansfield,	Shafter,
Charles,	Martin, of Santa Cruz,	Shurtleff,
Crouch,	McComas,	Smith, of Santa Clara,
Dean,	McConnell,	Stuart,
Estey,	Mills,	Thompson,
Freeman,	Murphy,	Townsend,
Garvey,	Nason,	Tully,
Glascock,	Noel,	Turner,
Hall,	Ohleyer,	Van Dyke,
Harvey,	Porter,	Walker, of Tuolumne,
Huestis,	Prouty,	Waters,
Inman,	Pulliam,	Weller,
Jones,	Reed,	Wyatt—52.
Kelley,		

NOES.

Andrews,	Belcher,	Condon,
Ayers,	Bell,	Cross,
Barbour,	Biggs,	Davis,
Barry,	Blackmer,	Dowling,
Barton,	Brown,	Doyle,
Beerstecher,	Caples,	Dudley, of Solano,
Dunlap,	Kenny,	Stedman,
Estee,	Kleine,	Stevenson,
Evey,	Larkin,	Sweasey,
Farrell,	Lavigne,	Swenson,
Filcher,	McCallum,	Swing,
Freud,	McNutt,	Tinnin,
Gorman,	Moffat,	Tuttle,
Hager,	Moreland,	Vacquerel,
Harrison,	Morse,	Walker, of Marin,
Heiskell,	Nelson,	Webster,
Herold,	Neunaber,	Wellin,
Herrington,	O'Sullivan,	West,
Holmes,	Reynolds,	Wickes,
Howard, of Mariposa,	Ringgold,	White,
Hunter,	Smith, of San Francisco,	Wilson, of Tehama,
Johnson,	Soule,	Mr. President—67.
Joyce,		

Upon concurring in the amendment of the committee, the ayes and noes were demanded by Messrs. Reynolds, Bell, Beerstecher, Farrell, and White.

The roll was called, and the amendment concurred in by the following vote:

AYES.

Andrews,	Heiskell,	O'Sullivan,
Barry,	Herold,	Pulliam,
Barton,	Herrington,	Ringgold,
Beerstecher,	Holmes,	Schell,
Blackmer,	Huestis,	Soule,
Boggs,	Hunter,	Stedman,
Boucher,	Inman,	Stevenson,
Brown,	Joyce,	Stuart,
Caples,	Kelley,	Sweasey,
Charles,	Kleine,	Thompson,
Condon,	Larkin,	Tinnin,
Cross,	Larue,	Tuttle,
Davis,	Lavigne,	Vacquerel,
Doyle,	Martin, of Alameda,	Van Dyke,
Estee,	Martin, of Santa Cruz,	Walker, of Marin,
Evey,	McNutt,	Walker, of Tuolumne,
Filcher,	Moffat,	Wellin,
Gorman,	Morse,	West,
Hager,	Murphy,	Wickes,
Hall,	Nelson,	White,
Harrison,	Neunaber,	Mr. President—63.

NOES.

Ayers,	Hilborn,	Prouty,
Barbour,	Hitchcock,	Reed,
Bell,	Howard, of Mariposa,	Reynolds,
Biggs,	Johnson,	Rhodes,
Burt,	Jones,	Rolfe,
Campbell,	Kenny,	Schomp,
Chapman,	Laine,	Shafter,
Crouch,	Lampson,	Shurtleff,
Dean,	Lewis,	Smith, of Santa Clara,
Dowling,	Mansfield,	Smith, of San Francisco,
Dudley, of Solano,	McCallum,	Swenson,
Dunlap,	McComas,	Swing,
Estey,	McConnell,	Townsend,
Farrell,	Mills,	Turner,
Freeman,	Moreland,	Waters,
Freud,	Nason,	Webster,
Garvey,	Noel,	Weller,
Glascock,	Ohleyer,	Wilson, of Tehama,
Harvey,	Porter,	Wyatt—57.

MR. REYNOLDS changed his vote from aye to no, for the purpose of moving a reconsideration.

THE PRESIDENT. The question is: Shall this article be ordered engrossed and read a second time?

So ordered.

ADJOURNMENT.

MR. LARUE. I move that we do now adjourn.

Carried.

And, at five o'clock and ten minutes P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND FORTY-FIFTH DAY.

SACRAMENTO, Wednesday, February 19th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Biggs,	Casserly,
Ayers,	Blackmer,	Chapman,
Barbour,	Boggs,	Charles,
Barry,	Boucher,	Condon,
Barton,	Brown,	Cowden,
Beerstecher,	Burt,	Cross,
Belcher,	Campbell,	Crouch,
Bell,	Caples,	Davis,

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Dean,	Kelley,	Schomp,
Dowling,	Kenny,	Shafter,
Doyle,	Kleine,	Shurtleff,
Dunlap,	Laine,	Smith, of Santa Clara,
Estee,	Larkin,	Smith, of 4th District,
Estey,	Larue,	Smith, of San Francisco,
Evey,	Lavigne,	Soule,
Farrell,	Lewis,	Stedman,
Filcher,	Mansfield,	Stevenson,
Freeman,	Martin, of Santa Cruz,	Stuart,
Freud,	McCallum,	Sweasey,
Garvey,	McComas,	Swenson.
Glascock,	McConnell,	Swing,
Gorman,	McCoy,	Thompson,
Grace,	McFarland	Tinnin,
Hager,	McNutt,	Townsend,
Hall,	Mills,	Tully,
Harrison,	Moffat,	Turner,
Harvey,	Moreland,	Tuttle,
Heiskell,	Morse,	Vacquerel,
Herold,	Nason,	Van Dyke,
Herrington,	Nelson,	Van Voorhies,
Hilborn,	Neunaber,	Walker, of Marin,
Hitchcock,	Noel,	Walker, of Tuolumne,
Holmes,	Ohleyer,	Waters,
Howard, of Los Angeles,	O'Sullivan,	Webster,
Howard, of Mariposa,	Porter,	Weller,
Huestis,	Prouty,	Wellin,
Hughey,	Pulliam,	West,
Hunter,	Reed,	Wickes,
Inman,	Reynolds,	White,
Johnson,	Rhodes,	Wilson, of Tehama,
Jones,	Ringgold,	Wyatt,
Joyce,	Rolfe,	Mr. President.

ABSENT.

Barnes,	Gregg,	Overton,
Berry,	Hale,	Reddy,
Dudley, of San Joaquin,	Keyes,	Schell,
Dudley, of Solano,	Lampson,	Shoemaker,
Eagon,	Lindow,	Steele,
Edgerton,	Martin, of Alameda,	Terry,
Fawcett,	Miller,	Wilson, 1st District,
Finney,	Murphy,	Winans.
Graves,	O'Donnell,	

LEAVE OF ABSENCE.

Leave of absence for four days was granted Mr. Dudley, of Solano.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

REPORT.

MR. AYERS, from the Committee on Reporting and Printing, reported as correctly engrossed: Amendment number five hundred and three, judicial department; amendment number five hundred and ten, revenue and taxation.

NOTICE.

MR. O'SULLIVAN. I hereby give notice that I will, to-morrow, move to amend Rule Thirty-three, governing the course of business in Convention.

RECONSIDERATION—EDUCATION.

MR. HERRINGTON. Mr. President: I move now to reconsider the vote whereby was passed to engrossment and second reading the article on education. The desire which I have to reconsider this originates in the fact that this Convention have left out of section six the State Normal School as a part of the public school system, and it ought to be in there. I desire also that it be amended so far as that section is concerned to prevent if possible the indiscriminate erection of local normal schools, which in their effect will have a tendency to destroy the State Normal School, and thereby compel a great number of persons who otherwise might have the benefit of the normal school free of additional expense, to go into these local districts and pay their way in order to become good teachers in this State.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: It is stated by the gentleman from Santa Clara that he desires the reconsideration of the article and the section six, for the purpose of inserting the State Normal School as a part of the common school system of this State, it having been omitted from section six as it now stands. There can be no objection to that. While favoring that change, I am also in favor of striking out the words "and grammar," in line six, so that the clause will read: "In the primary schools, no language but the English shall be taught." I hope, sir, that the motion to reconsider will prevail. The objections that were raised to striking out the whole of the sentence—"In the primary and grammar schools, no language but the English shall be taught"—was, that the primary schools were overcrowded with studies, and that scholars that went there were unable to get a thorough knowledge of the English language, as before they were thoroughly proficient in rudimental English studies they were put into classes embracing the languages, and the languages were taught to those children to the detriment of the common theory of English common school education. That, Mr. President, was the objection urged by a number of gentlemen on this floor. In order to obviate that, if the amendment be adopted, nothing but the English will be taught in the primary schools, and there will be no danger of the children being instructed in the languages when they are yet unlearned in the English language. Mr. Larue's amendment was to strike out the clause. If this motion prevails, I shall offer an amendment to strike out simply the words "and grammar." The schools throughout the rural districts of this State, outside of the cities, are all primary schools, and it would be impossible under the Constitution to teach anything but the English language in these schools in the country districts, unless the people of those districts saw fit to raise that grade of their schools to the grammar school; but it would enable the people of the cities of this State in their grammar schools to have the languages taught.

MR. WATERS. Mr. President: I move to lay the motion to reconsider on the table.

The ayes and noes were demanded by Messrs. Beerstecher, O'Sullivan, Tully, Herrington, and Weller.

The roll was called, and the motion to lay on the table was lost by the following vote:

AYES.

Biggs,	Hall,	Reed,
Boggs,	Hilborn,	Shafter,
Boucher,	Holmes,	Smith, of Santa Clara,
Caples,	Hunter,	Soule,
Casserly,	Inman,	Stevenson,
Chapman,	Johnson,	Stuart,
Charles,	Kelley,	Swing,
Crouch,	Laine,	Tinnin,
Davis,	Mansfield,	Townsend,
Dean,	Martin, of Santa Cruz,	Turner,
Dunlap,	McComas,	Tuttle,
Estey,	McConnell,	Waters,
Evey,	Noel,	West,
Garvey,	Ohleyer,	Wyatt,
Glascock,	Prouty,	Mr. President—47.
Hager,	Pulliam,	

NOES.

Andrews,	Herrington,	Reynolds,
Ayers,	Hitchcock,	Rhodes,
Barbour,	Howard, of Mariposa,	Ringgold,
Barry,	Huestis,	Rolfe,
Barton,	Hughey,	Schomp,
Beerstecher,	Joyce,	Shurtleff,
Bell,	Kenny,	Smith, of 4th District,
Blackmer,	Larkin,	Smith, of San Francisco,
Brown,	Larue,	Stedman,
Burt,	Lavigne,	Sweasey,
Campbell,	Lewis,	Swenson,
Condon,	McCallum,	Thompson,
Cowden,	McCoy,	Tully,
Cross,	McFarland,	Vacquerel,
Dowling,	McNutt,	Van Dyke,
Doyle,	Mills,	Van Voorhies,
Estee,	Moffat,	Walker, of Marin,
Farrell,	Moreland,	Walker, of Tuolumne,
Filcher,	Morse,	Webster,
Freeman,	Nason,	Weller,
Freud,	Nelson,	Wellin,
Harrison,	Neunaber,	Wickes,
Harvey,	O'Sullivan,	White,
Herold,	Porter.	Wilson, of Tehama—72.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I am opposed to the reconsideration of this article, and I am amazed at the coolness with which gentlemen assert that the normal school should be a part of the public school system of the State. This seems to be the chief cause or apology for reconsideration. What logic; what justice; what propriety; what common sense is there in educating school teachers? It is true that the taxpayer is lawful prey for everybody to pluck, but if we start in with this system of educating teachers, we must carry it out in full. We have provided for a great number of Superior Judges here and for legislators, etc. Why not have a normal school for Judges and for legislators? School teachers are well remunerated for their services. Their salaries are higher than the corresponding duties and position in other departments of life in California. Why not permit them to educate themselves? Why educate them at the expense of the taxpayers?

MR. WHITE. Why does the Legislature appropriate one hundred thousand dollars this last year to educate lawyers?

MR. CAPLES. Did it do it?

MR. WHITE. Yes, sir.

MR. CAPLES. I am informed of it for the first time. If the gentleman is correct, I avail myself of this occasion to enter my protest against that one hundred thousand dollars too. If we expect, Mr. President, to complete our labors here we have got to cease this eternal reconsideration. In this case there is no legitimate apology for it, except that the normal school should be incorporated into the common school system. Now, I am ready and willing, Mr. President, to admit that the State owes to the children of the State, an education, or the elements of an English education, merely the basis of an education, but if it is desired to educate beyond that point, I hold that it is the privilege of every parent to educate their children up as high as they choose to do—make lawyers, or doctors, or professors of them—but I deny that the State owes that kind of an education to the children of the State; an attempt to give them that kind of an education is robbery and nothing else; it is robbery of taxpayers. It is not honest, and I avail myself of this occasion to enter

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my solemn protest against any such form of robbery. Mr. President' the idea prevails here, it prevails in the State, it is a popular delusion, that taxation hurts nobody but the taxpayer, and I declare that no greater mistake was ever fallen into. An onerous taxation handicaps, discourages, and represses every species of industry and industrial enterprise that offers employment to the poor man; yet gentlemen who think that they are not in the boat, and do not care whether she founders or not, are ready to pile on taxes for this, and that, and everything, thinking all the time that it is not their funeral. I beg to ask those men to reflect one moment upon the consequences of that system of taxation that levies and collects an onerous tax upon property. What is the effect? Can any gentleman for one moment doubt that the effect is to discourage the development of the resources of the country and prevent industrial enterprises that alone would give prosperity to the whole people? Is it not true? Gentlemen must remember that we are all in the same boat; the rich and the poor, the high and the low, must flourish together, or suffer together. The policy of wisdom, the policy of justice, and the policy of honesty, is to confine the expenses of government to the legitimate, and necessary, and the inevitable expenses of government, and not to extend the government so as to engage in every species of enterprise.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: Upon this question I have hitherto listend to others and voted without speaking, but I desire to say a few words explanatory of my votes. I do not consider the proposition presented to involve merely a question of taxation as has been stated by others. I do not consider it to be merely a question of birthplace or race, but rather one of governmental policy. Now, my ancesters originally came from the same German land as those of my colleague, Mr. Beerstecher. He, a recent emigrant, may have more attachment for the fatherland, so called, than I have, yet I certainly have no prejudices against the land from whence, at a more remote period, my ancestors emigrated, or against more recent emigrants. Why should I? We are a nation of immigrants and have been a nation of immigrants. I mean a nation in the broadest sense, as my friend, Mr. Estee, took some exceptions to that a few days ago. Our people came from all parts of the world—from the British Isles, from the vine-clad hills of France, from the plains of Holland, from the valleys of the Rhine, and from the cliffs of Switzerland. They traversed the Atlantic when it was an unknown sea. They landed upon this continent where before them was wide, unbounded, magnificent wilderness; where sprang and fell the forest leaves; where ebbed and flowed the ocean tide in uninterrupted stillness; where, in a new world, they were untrammeled and unfettered by anything they had left behind them in the old world.

For what purpose did they come? For what purpose did they leave their beautiful home land? For what purpose did they cross the unknown sea? For what purpose did they make their home in the unexplored wilderness? They came seeking political and religious freedom. They invited friends and relatives they left in the Old World to join them in the new land. Did they come here for the purpose of reëstablishing European institutions? Did they come to transplant the seeds of monarchical or imperial government in this free land? No, they came to establish a government of freedom for themselves here, and not for the land they had abandoned. When they endured all this; severed home ties and came to this continent free and untrammeled, it was with the determination of being a part of the new institutions in the new land, and not a part of the home government they had left. If immigrants come here now for the purpose of being educated in the German, or in the French, or in any other language, with a view of returning to the country from whence they came, they are not a part of us, and do not belong to us. If they come here for the purpose of being citizens of this country, then I hold out to them this sentiment: that language is a bond of union between us as a people. And unless we are united in language and of one tongue, we never will become homogeneous; on the contrary, we would be a heterogeneous people, as Austria is to-day. Look at the Empire of Austria, composed of Zechs, Sclavs, Germans, Hungarians, and various other races, without the cohesive bond of a common tongue; speaking different languages; its people unaffiliated in sentiment, and without homogeneity. It is ready to crumble to pieces for want of that cohesion which all the world regards as the true bond of a common language which makes one people. Unless we make our people homogeneous by language, we never will be homogeneous in sentiment.

MR. BARBOUR. I would like to ask the gentleman a question. Now we print upon the coin of the country "E pluribus unum." Do you object to that?

MR. HAGER. I think it well that every man should know something of Latin. General Jackson when, at Harvard, they conferred upon him the degree of LL. D., said to Major Downing: "I suppose we must talk Latin now to these learned men; won't E pluribus unum do?" and the Major thought it would. It is well to know a little Latin, even if it be only E pluribus unum. [Laughter.] Now, what is the purpose of education? Is it to instruct a child in the German, the French, the Spanish, or the Italian, or any other language? The purpose of education is to fit him for the duties of life in the sphere where he is located. What are the purposes of education here with us? Why, to instruct the youth of this land, whether they be French, German, or any other race, in American institutions—not French institutions, not German institutions. If they are destined to perform the governmental duties of life as citizens of a common republic, are we bound to teach them these duties in the different languages of their home land, according to the different races to which they belong? In such case we must have teachers in German, French, Spanish, Dutch, Scandanavian, and most important of all, if numbers are to be taken into consideration, in the Chinese. If we must teach the German children in their language, must we not also teach the Chinese in their language? I refer Mr. Beerstecher to the policy of his own country, Germany, in regard to Alsace and Lorraine, where that subjugated people, although French, are taught in the schools only in the German language—French being prohibited in order to make them German citizens, familiar with German institutions, and to divest them of that French character and nationality which they have inherited. They say, and they say with truth, that if they are continued to be educated in the French language they never will become Germanized. The Germans are right in this national policy towards Alsace and Lorraine if they wish to make those people subordinate to German institutions. And that should be our policy. Every child here should be taught in the language of Washington, the language of the Declaration of Independence, the language of the Constitution of the United States, the language of the Constitution of the State of California, and if we ever expect to have a homogeneous people we must do this. I have no prejudices of race, but I am in favor, sir, of one flag, one language, and one country.

MR. ESTEE. Didn't you vote the other day against one nation?

MR. HAGER. No, sir; I said the Government of the United States might not be all that constitutes the nation. We are a nation—so I proclaim it—composed of a Federal Government sovereign to the extent of delegated powers; composed of State governments, sovereign except so far as they are limited by charter; composed of the people, sovereign over all. These constitute the nation. The Federal Government, State governments, and the people, compose the nation. But the Federal Government alone is not the nation. We recognize the sovereign power to be with the people, and when you undertake to say that the Federal Government of itself is the nation, you leave out the powers reserved to the States and to the people.

MR. AYERS. Would you make the exigencies of conquest and war, as in Alsace and Lorraine, applicable to a State like this?

MR. HAGER. I was referring Mr. Beerstecher, who favors teaching in our schools in foreign languages, to what they are doing in his native land, and I admit it to be good national policy on the part of Germany, if they wish to Germanize Alsace and Lorraine, to have none but the German language taught in the schools.

MR. AYERS. Has the treatment of Alsace any application to this State at this time?

MR. HAGER. In reply to Mr. Beerstecher, I have referred him to the action of the government in his native Germany as being different from what he would have us do here. This is merely illustration. My argument is simply one of policy and patriotism. In my opinion, it is the duty of every citizen who looks to the future welfare of our country and the preservation of its institutions, to favor the language of our own country, in all teaching in our public schools, in preference to that of any other country; and if children of foreign birth are brought here to be educated in German or in French, with the idea of returning to their native country to live there, why, I am prepared to say we do not keep school by public taxation for the world.

MR. AYERS. Does it detract from the patriotism of our children to teach them other languages?

MR. HAGER. It detracts from the obligations of the State and the citizen taxed. Every man should know how to perform the duties and exercise all the privileges of a citizen; he should be able to understand the institutions of the country and to read the Constitution in the language of the country, and the instruction in our public schools should be directed to these purposes. If any desire to acquire German, or French, or Latin, or Greek, or any other language, the opportunities of a lifetime are before them. The common school can only open the doors of science and give the student a glimpse of the apartments within, but the exploration of the chambers of knowledge is the work of a lifetime. No one can complete an education in two or three or four years. He can only learn how to acquire an education in after years. The professors open the doors of science and let the student have a glance of the interior. The exploration is the work of a lifetime.

THE PRESIDENT. The gentleman's ten minutes have expired.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I have taken some interest in this question, but from an entirely different standpoint from that taken by my friend Judge Hager and the other gentlemen on this floor. I maintain that we ought not to close the door of science on any field of inquiry that the children of our country desire. I maintain that to lay down in the organic law that we shall not teach but a certain line of studies, would be an infringement upon the rights of the people of the State. I maintain that the people of this State should have a right ten years from now to say that there shall be a cosmopolitan school in San Francisco if they want one; that in San Francisco American-born children may, in the grammar schools of the country, study Latin or French if they want to; that the people shall have the right, at any time hereafter, to say, in any municipality of this commonwealth, that certain lines of study shall be adopted. That is my position. The idea of assuming in this Convention that henceforth nothing but a certain line of studies shall be adopted in the common schools of the country, is doing injustice to the intelligence of those people who are to come after us. I welcome my friend Judge Hager back to the American nation. I remember what my friend said, and he doubted that this was a nation, and I am glad to see that he has got a little of the true religion in him.

MR. HAGER. I said nothing of the kind. Our speeches were both noticed in the papers.

MR. ESTEE. I appeal to what the gentleman said.

MR. HAGER. I said there was no doubt we were a nation.

MR. ESTEE. Very well. This has nothing to do with the propositions that the Germans when they come here shall be taught the German language, that the French when they come here shall be taught the French language. It is not to pay any deference to the German, to the French, or to any people that this proposition ought to be reconsidered

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and voted down as passed by the Committee of the Whole. That cuts no figure in the case. The proposition is: Shall we say in the organic law of this State, that the Legislature hereafter shall not provide that French, or German, or Latin may be taught in the grammar schools of this State. Are we prepared to say that the people ten or twenty years from now will not have sufficient intelligence in the legislative department of the government, to judge whether they want to teach Latin or French, or any other study to the children of this State at that time? Can we not safely leave this to the intelligence of coming generations? Is it a wise policy to do it? That is the proposition. Do we possess all the intelligence, and all the wisdom that is ever going to exist in this State? Can we not safely leave some questions to the intelligence of those who come after us? We have survived here for thirty years under a Constitution that had no such thing in it. There are communities where parents desire to fit their sons for the University, and where they send their sons to the grammar school in the hope of obtaining a higher education; where the sons desire to devote their lives to literature, we will say, they go there and desire to take the primary steps in Latin, or in French, or in Greek. I can see no reason why they should not. Do not their parents help pay for these schools; and if the community in which they live are anxious that they should be so taught, why should we say that they shall not? Take San Francisco, for instance, I would like to know what right we have to say that the City of San Francisco shall not have a cosmopolitan school there. I say that it is interfering with the system of local self-government, which my distinguished friend, from Germany, Judge Hager, has advocated so ably on this floor. It is a question of local self-government. We do not wish you to put any such cloud upon our intelligence. Let us in the future have cosmopolitan schools wherein French, German, and Latin may be taught if we want them. That is all the people of San Francisco, of Sacramento, or any other part of the State desire. It is not that it shall be done. It is not that any of these languages shall be studied in these schools. It is a question of inhibition. Shall we be prohibited from having these schools? Now, I do not bow to any gentleman upon this floor in devotion to the country of my birth. I claim that the youth of the country ought to be taught the English language. They ought to be taught to revere the Constitution of the United States, and the laws of the United States, and more, sir, they ought to be taught devotion to the flag of their country. I recognize that, and I recognize that the common school system of our country is the very palladium of American liberty—and on that term I refer to my friend from Alameda, Mr. Van Voorhies, who is familiar with the question of palladium.

MR. CASSERLY. Mr. President: There was a palladium in the bill of rights. Now, it seems there is a second one. I never heard of two, but my ingenious and eloquent friend who has just spoken, seems to have discovered a second one.

MR. ESTEE. Well, I stole it from Pallas. My friend Casserly says there can be no nation; that etymologically speaking, nation is the wrong word.

MR. CASSERLY. I said no such thing. I am not in the habit of talking nonsense.

MR. ESTEE. I understood my friend to say so.

MR. CASSERLY. What I said was that the word nation was nowhere to be found in the American Constitution.

MR. ESTEE. It is found in forty million of American hearts, if it is not in the American Constitution, and it ought to be there forever. [Applause.]

Messrs. West, Waters, White, Moreland, and Brown demanded the previous question, which was ordered by the Convention, on a division, by a vote of 60 ayes to 45 noes.

Upon the motion to reconsider, the ayes and noes were demanded by Messrs. Beerstecher, O'Sullivan, Cross, Vacquerel, and Smith, of Fourth District.

The roll was called, and the motion to reconsider prevailed by the following vote:

AYES.

Andrews,	Harrison,	Reynolds,
Ayers,	Harvey,	Rhodes,
Barbour,	Herold,	Rolfe,
Barry,	Herrington,	Schomp,
Barton,	Hitchcock,	Shurtleff,
Beerstecher,	Huestis,	Smith, of 4th District,
Belcher,	Hughey,	Smith, of San Francisco,
Bell,	Joyce,	Soule,
Blackmer,	Kelley,	Stedman,
Brown,	Kenny,	Stevenson,
Burt,	Kleine,	Stuart,
Campbell,	Larkin,	Sweasey,
Condon,	Larue,	Swenson,
Cowden,	Lavigne,	Tully,
Cross,	Lewis,	Vacquerel,
Dowling,	McCallum,	Van Dyke,
Doyle,	McCoy,	Walker, of Marin,
Estee,	McNutt,	Webster,
Farrell,	Mills,	Weller,
Filcher,	Nason,	Wellin,
Freeman,	Nelson,	Wickes,
Freud,	Neunaber,	White,
Gorman,	O'Sullivan,	Wyatt—71.
Grace,	Porter,	

NOES.

Biggs,	Casserly,	Davis,
Boggs,	Chapman,	Dean,
Boucher,	Charles,	Dunlap,
Caples,	Crouch,	Estey,
Evey,	Laine,	Smith, of Santa Clara,
Garvey,	Mansfield,	Swing,
Glascock,	Martin, of Santa Cruz,	Thompson,
Hager,	McComas,	Tinnin,
Hall,	McConnell,	Townsend,
Heiskell,	McFarland,	Turner,
Hilborn,	Moreland,	Tuttle,
Holmes,	Morse,	Van Voorhies,
Howard, of Los Angeles,	Noel,	Walker, of Tuolumne,
Howard, of Mariposa,	Ohleyer,	Waters,
Hunter,	Prouty,	West,
Inman,	Reed,	Wilson, of Tehama,
Johnson,	Ringgold,	Mr. President—54.
Jones,	Shafter,	

MR. HERRINGTON. I send up an amendment.

THE SECRETARY read:

"Amend section six, on education, as follows: Strike out the words 'normal schools,' in line two, and add and insert the words, 'the State Normal School, and such additional State normal schools as the Legislature shall provide,' after the word 'schools' first occurring in line two."

THE PRESIDENT. The gentleman's amendment is not in order. The sixth section is not before the Convention.

MR. HERRINGTON. Mr. President: I move, then, to reconsider the vote by which section six was concurred in.

MR. GLASCOCK. I rise to a point of order. The gentleman's notice was not to reconsider the motion by which the Convention concurred in the report of the Committee of the Whole, but by which the Convention adopted the amendment. I believe the Convention has not adopted any amendment yet.

THE PRESIDENT. The Convention concurred in the amendment in Committee of the Whole, and adopted it under the previous question.

MR. GLASCOCK. I believe the gentleman's notice does not cover that ground.

THE PRESIDENT. The notice expressly covers it. The question is on the motion to reconsider.

The motion prevailed on a division, by a vote of 56 ayes to 53 noes.

MR. HERRINGTON. Mr. President: I now send up my amendment again.

THE SECRETARY read:

"Amend section six, on education, as follows: Strike out the words 'normal schools,' in line two, and add and insert the words, 'the State Normal School, and such additional State normal schools as the Legislature shall provide,' after the word 'schools' first occurring in line two."

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President and Gentlemen of the Convention: The amendment as amended will read:

"SEC. 6. The public school system shall include primary and grammar schools, the State Normal School, and such additional State normal schools as the Legislature shall provide, and such high schools, evening schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund and the State school tax, shall be applied exclusively to the support of primary and grammar schools. In the primary and grammar schools no language but the English shall be taught."

The words "normal schools" I leave out. The object and purpose of this amendment, gentlemen of the Convention, is to prevent what may occur if the section is allowed to remain as it now stands. The State Normal School of course depends for its support upon the entire State. As it is now conducted, it is extremely efficient in its management, and is well calculated to produce the results anticipated when it was founded by the State. It has now, to some extent, become the pride of the State, and particularly of the people in the neighborhood where that institution is located. It has for its object and purpose the training of educators. The standard to which that class of educators should be instructed in the profession in which they are engaged and employed, should occupy a clear position and should be a great assistance in carrying forward the great system of education that we have adopted in the State. This section, as it now stands, will permit the establishment of local normal schools, and if these various localities in the State that are able to support local normal schools should choose to establish them, there will be in almost every large city in the State a local normal school. The State Normal School will become inefficient in its management, attendance, and support, and will hardly be worth the money that is appropriated for its support by the State authorities. The consequence will be that persons who desire to be educated in the normal school and follow the profession of teaching, instead of having a place where they may acquire that education without expense, will have to pay for it in your local normal schools. I say that the normal school should be patronized by the whole people of the State; that it is supported by the State and should not be local in its character, nor localized so far as the institutions themselves are concerned. There are localities where it is impossible to keep up the common schools, in consequence of a sparsely settled neighborhood, and in such cases the law now permits persons in these districts to send their children into other districts for the purpose of educating them, by paying therefor a compensation fixed by the Boards of Education. This same system is attempted to be inaugurated with reference to normal schools by the section as it now stands—permitting the various localities that are able to establish and support normal schools at home, leaving the State Normal School probably without that support that it ought to have. Besides that, it is degrading the character of the institution itself. These are the reasons that actuate me in offering this amendment, and I do submit that the institution as it

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has been established, ought to be supported with the greatest efficiency that it is possible to give it.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I voted to reconsider this section for the purpose of indicating that I desire to strike out that section. It is inconsistent with the balance of the report of the committee, and inconsistent in every respect with the system of common schools established in this State. Section six was not placed in there by the committee. It was done by an ex-State officer of the public schools that sought to engraft upon our common school system a system of high schools, grammar schools, technical schools, and other schools that are not, and never were, contemplated in the common school system of this State.

MR. BLACKMER. Does not the gentleman know that the section was reported by the Committee on Education?

MR. LARKIN. And offered by Mr. Swett.

MR. BLACKMER. You are incorrectly informed.

MR. LARKIN. This section is not in accord with section four of that report. Section four provides that the taxation of this State shall be appropriated to the common schools. In section six, the words "common schools" are studiously avoided, and avoided for a purpose. Whenever language is used in a Constitution, and a word in an article indicates one thing, that word, if it is intended to convey the same idea, should be used in every section and every line where the same idea is intended. It was a fraud intended upon this whole system which we have established throughout the State, and must be supported by the State. Why should anything else than a system of common schools, which is common to every child in the State, be supported by the State. These gentlemen that advocate that system certainly will not do it with good faith to the common school system, but seek, by that section, to defraud the children of this State out of the money that should go to the common schools, and take it to educate children to a higher degree. That is my objection to it. It is a fraud on the face of it; if it is not, why not use the words "primary school," in the final clause of section four?

MR. REYNOLDS. I would like to understand the gentleman. Does he mean to say that the words "common school" are studiously omitted from section six with the intent to appropriate money to any other purpose than the common schools—the primary and grammar branches?

MR. LARKIN. I know of no other reason for using the words than to avoid section four, which directly provides that no money shall be appropriated except for common schools. This section should not be here. Common schools are schools common to every child in the State. The original report of the committee on section four contained these words: "Subject to the provisions of section six of this article." Section six was intended to qualify section four.

MR. REYNOLDS. Does the gentleman know what a primary and a grammar school is?

MR. LARKIN. I will find out from the gentleman from San Francisco when I want to know.

MR. REYNOLDS. If the gentleman says that this section six was intended to qualify section four, the gentleman is mistaken.

MR. LARKIN. Then strike it out and leave section four, leaving the Legislature to determine what common schools are and to define them; that is all that is necessary in the Constitution. We have already provided that all the taxes shall be for the common schools. What source of revenue have you to support these schools enumerated in section six, except you obtain it by fraud, contrary to section four? Section six provides that "The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority." Now, any man who reads the English language, can see that there is an intention there to have other schools than what are considered common schools, supported by the State. I am in favor of striking out that section, and that every child in the State shall receive the benefits of a common school education—no more and no less.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: As I understand it, it would not be in order now to strike out that section. Now, sir, it seems to me that the present amendment, introduced by the gentlemen from Santa Clara, is not the feast to which we were invited here on this motion to reconsider. As I understand it, the object of the motion to reconsider the vote by which the Convention concurred in that report of the Committee of the Whole, was to allow an amendment to modify the restriction in reference to the teaching of languages in the schools. Now, I hope that the Convention will confine itself to that proposition. I am in favor of modifying that so as to allow the cities in this State, if they see proper with their own funds, to allow the teaching of others than the English language. That was my object in voting for the motion to reconsider. I hope the Convention will vote down the amendment of the gentleman from Santa Clara, and come to the question for which the reconsideration was had.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: As a member of the Committee on Education, I desire to state the position taken by that committee in regard to this question of the normal school. It was not the desire or the intention of the committee to exclude the normal school from the public school system. The question was before them for discussion, and the first part of this section was put there for the purpose of determining what the public school system should be, and that determination was arrived at for the purpose of saying that whenever any of the schools should be established, that then they should come under the authority and the control of the school officers so that no school might be established, and then start off upon a course of its own.

MR. WATERS. Mr. President: I would like to state, that if I have got to set here and listen to the same speeches over again, I want to hear them. We can't hear a word over here; there is too much noise.

MR. BLACKMER. Now, sir, if you will examine the first part of this section, it says that the public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority. The normal school has been established by the Legislature, consequently it is included in the public school system by this section. So have evening schools in San Francisco, and they are included in this public school system. There is no necessity of placing this State Normal School in this section, because it is already included. The argument of the gentleman from Santa Clara is that there should be no other normal school, because we have one at San José. I am in favor of the normal school; I take pride in it; I know that it is doing a grand and a glorious work in this State; but I do not propose to put anything in this Constitution that will prevent another being established if it seems wise for it to be done. Now, sir, the normal school having been included in the other, there is no necessity for this amendment. In regard to the question of striking out this section, if that comes properly before this Convention, I will improve the opportunity to express my mind upon it. As for the gentleman from El Dorado, I do not know whether he has railroad on the brain, or what the matter is. He seems to find fraud and intention of wrong in everything that he does not agree with. Now, sir, I hope a figment of the brain—I do not believe the gentleman's heart means it. But, sir, it is unjust, and it is unwise to get upon this floor and charge fraud upon the Committee on Education in reporting this article. There are no grounds for it, and he has no right to do it.

MR. HERRINGTON. The gentleman has misrepresented my amendment.

MR. BEERSTECHER. Mr. President: As I understand it, the object of the Convention in reconsidering the vote upon section six, was to allow an amendment in relation to teaching the languages in the high schools. I do not understand, sir, that the object was to insert any amendment in relation to normal schools. I find, sir, upon reading section six, as it stands, that there is ample provision made in relation to the normal school. There is no trouble, sir, about the normal school at all. The normal schools are a part of the common school system, and the amendment of the gentleman from Santa Clara would in no wise change the section in that respect. I hope that we will come to a vote upon the amendment of Mr. Herrington, and that the amendment will be voted down, because it seems unnecessary; and then that the Convention will proceed to a vote upon the question for which the article and the section was reconsidered, and that is, to strike out in the sixth line the words, "and grammar."

MR. LAINE. Mr. President: I presume that we will consume the balance of the month upon this matter. Now, when Congress passed this Act, they used the word "common schools." It had a clear and well defined meaning. It meant that class of schools that taught the common English branches, and nothing else; and I do not believe in changing that word. I hope that these amendments will be voted down, and that an amendment will be adopted striking out "primary and grammar," and inserting the word "common." It is the best word. It is the word under which we received the donations, and it is the word under which we should continue.

MR. REYNOLDS. The question is on the amendment of the gentleman from Santa Clara—I have nothing to say.

The amendment was rejected.

MR. BEERSTECHER. Mr. President: I move to amend the amendment of the Committee of the Whole to section six, by striking out from line six, the words "and grammar," where they occur the second time.

REMARKS OF MR. JONES.

MR. JONES. Mr. President: I have seen some reason in the remarks of the gentleman to think that perhaps I was mistaken, and that the objection to the section rested only upon the assumption that it will, as it reads now, prevent the teaching of any language but the English in any schools belonging to the public school system. The gentleman from San Francisco, Mr. Estee, and the gentleman from San Diego, have particularly complained, if I understand them rightly, now that the people of a city or a town ought to have the right to have any language taught in any school which they organize and pay for. I agree perfectly in that, and I do not think it is the desire of any one here to object to that, or to weaken education, or to discourage the highest education attainable by any one. But here is another proposition: The term "common school," has a well known, clear, and definite meaning in the existing Constitution. Section three of article nine provides that the Legislature shall provide for the system of common schools. The term common schools is universally understood throughout the United States, and has been for generations. It is understood to be a system of schools for the education of American youth; to train them in the use of the American language; to prepare them to be American citizens, and to perform the duties of such; and so far as the common school system can, confer a general education upon the people. Now, there is something necessary to preserve that. The common school system can be destroyed in more ways than one. It can be effectually destroyed, broken down, and ruined, by putting too much on it; more than ever was contemplated; more than it is practicable to carry, as it could be by withdrawing the funds of support from it. The law has provided what the common schools are, and has prescribed as full a course of education as can be maintained in the common schools to the advantage of the common schools. If you put in more you will break down the system. I desire to preserve that system. I do not call it a palladium—I do not know much about palladiums—never had one. [Laughter.] But our common school system is well known. Our greatest scholars—our Univer-

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sity men—men famous throughout the world for their culture—have not been afraid to stand up and eulogize the merits of our plain common school system, which lays the elements of education before every boy and every girl in the land; gives them a good English education, and leaves them armed in this way for the conflicts of life, or to go forward and achieve a higher education. I think that the difficulty under which the Convention is now laboring arises from the fact that a new term—a term of indefinite meaning—is used in the sixth section, instead of the term common schools. The expression used in the fourth section is common schools, and in the existing Constitution it is common schools. Now, if we will just strike out these words, "primary and grammar," and use the term "common schools," we shall be all right.

MR. WEST. Mr. President: I wish to call the attention of the Convention to the fact that if the amendment offered by the gentleman from San Francisco should prevail, it would provide that the entire revenue derived from the State school fund and the State school tax may be applied to the teaching of all the modern languages or ancient languages in existence. It would, as the gentleman has just remarked, break down the entire common school system. In striking out the words, "and grammar," it would provide that the funds thus raised——

MR. ESTEE. You have got the wrong "grammar." You have got the first word "grammar" in the sixth line, and the amendment is to strike out the words "and grammar," where they occur the second time in line six.

MR. WEST. The amendment is to strike the words "and grammar" out of the amendment offered by General Howard, and adopted in Committee of the Whole. It would leave the clause: "In the primary schools no language but the English shall be taught." Just before that it says, "but the entire revenue derived from the State school fund, and the State school tax, shall be applied exclusively to the support of the primary and grammar schools." Therefore, in the higher grade, or the grammar schools, in our common school system, may be taught all modern and all ancient languages, and the public funds paid therefor.

MR. CROSS. Have you any idea that the State will ever go crazy on the subject?

MR. WEST. I cannot say what freaks the Legislature may take.

MR. CROSS. Do you think that this Convention has all the wisdom of this century?

MR. WEST. I insist that my assertion is correct, that all these languages might be taught. A better amendment would have been to strike out that amendment so introduced by Mr. Howard, of Los Angeles.

Messrs. Walker of Tuolumne, Waters, Smith of Fourth District, Heiskell, and Moreland demanded the previous question, which was ordered by the Convention, on a division, by a vote of 64 ayes to 60 noes.

Upon the adoption of the amendment of Mr. Beerstecher, the ayes and noes were demanded by Messrs. Beerstecher, Wellin, Barton, Ayers, and O'Sullivan.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Harvey,	Rhodes,
Ayers,	Herold,	Rolfe,
Barbour,	Huestis,	Schomp,
Barry,	Hughey,	Shurtleff,
Barton,	Joyce,	Smith, of 4th District,
Beerstecher,	Kelley,	Smith, of San Francisco,
Bell,	Kenny,	Soule,
Blackmer,	Kleine,	Stedman,
Brown,	Larkin,	Stevenson,
Campbell,	Larue,	Stuart,
Condon,	Lavigne,	Sweasey,
Cowden,	Lewis,	Swenson,
Cross,	McCallum,	Thompson,
Doyle,	Mills,	Tully,
Estee,	Morse,	Vacquerel,
Farrell,	Nason,	Van Dyke,
Filcher,	Nelson,	Walker, of Marin,
Freeman,	Neunaber,	Weller,
Freud,	Noel,	Wellin,
Gorman,	O'Sullivan,	Wickes,
Grace,	Reynolds,	White—64.
Harrison,		

NOES.

Biggs,	Herrington,	Porter,
Boggs,	Hilborn,	Prouty,
Boucher,	Hitchcock,	Pulliam,
Burt,	Holmes,	Reed,
Caples,	Howard, of Los Angeles,	Ringgold,
Casserly,	Howard, of Mariposa,	Shafter,
Chapman,	Hunter,	Smith, of Santa Clara,
Charles,	Inman,	Swing,
Crouch,	Johnson,	Tinnin,
Davis,	Jones,	Townsend,
Dean,	Laine,	Turner,
Dowling,	Mansfield,	Tuttle,
Dunlap,	Martin, of Santa Cruz,	Van Voorhies,
Estey,	McComas,	Walker, of Tuolumne,
Evey,	McFarland,	Waters,
Garvey,	McNutt,	Webster,
Glascock,	Moffat,	West,
Hager,	Moreland,	Wilson, of Tehama,
Hall,	Murphy,	Wyatt,
Heiskell,	Ohleyer,	Mr. President—60.

PAIRED—Mr. McCoy, aye, with Mr. McConnell, no.

Upon concurring in the amendment of the committee, as amended, the ayes and noes were demanded by Messrs. Waters, Beerstecher, McComas, Hilborn, and Holmes.

The roll was called, and the Convention refused to concur in the amendment by the following vote:

AYES.

Andrews,	Harrison,	Nason,
Ayers,	Harvey,	Nelson,
Barbour,	Herold,	Neunaber,
Barton,	Huestis,	Noel,
Blackmer,	Hughey,	Rhodes,
Brown,	Hunter,	Ringgold,
Campbell,	Joyce,	Rolfe,
Chapman,	Kleine,	Shurtleff,
Charles,	Larue,	Tully,
Condon,	Mansfield,	Turner,
Cowden,	Martin, of Santa Cruz,	Tuttle,
Estee,	McCallum,	Wickes,
Gorman,	Moreland,	Wyatt—40.
Grace,		

NOES.

Barry,	Holmes,	Shafter,
Beerstecher,	Howard, of Los Angeles,	Smith, of Santa Clara,
Bell,	Howard, of Mariposa,	Smith, of 4th District,
Biggs,	Inman,	Smith, of San Francisco,
Boggs,	Johnson,	Soule,
Boucher,	Jones,	Stedman,
Burt,	Kelley,	Stevenson,
Caples,	Kenny,	Stuart,
Casserly,	Laine,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Lavigne,	Swing,
Dean,	Lewis,	Thompson,
Doyle,	McComas,	Tinnin,
Dunlap,	McConnell,	Townsend,
Estey,	McFarland,	Vacquerel,
Evey,	McNutt,	Van Dyke,
Farrell,	Mills,	Van Voorhies,
Filcher,	Moffat,	Walker, of Marin,
Freeman,	Morse,	Walker, of Tuolumne,
Freud,	Murphy,	Waters,
Garvey,	Ohleyer,	Webster,
Glascock,	O'Sullivan,	Weller,
Hager,	Porter,	Wellin,
Hall,	Prouty,	West,
Heiskell,	Pulliam,	White,
Herrington,	Reed,	Wilson, of Tehama,
Hilborn,	Reynolds,	Mr. President—83.
Hitchcock,	Schomp,	

The article was ordered engrossed for second reading.

THE FILE.

THE PRESIDENT. The next article on the file is the article on schedule.

MR. MCCALLUM. I rise to a point of order. Rule Fifty-three provides:

"All propositions and resolutions embracing matter proposed to be incorporated in the Constitution, reported by a standing or a special committee, shall be read when reported, and shall be placed on a general file, to be kept by the Secretary, in the order in which they are reported. They shall be taken from the file and acted upon in the order in which they are placed thereon, unless otherwise ordered by the Convention; provided, that engrossed propositions and resolutions shall be placed at the head of the file, in the order in which they are received. Two hundred and forty copies of the file for each day shall be printed."

I see by the file published February seventeenth, that the preamble and bill of rights is at the head of the file for a second reading. I give importance to this, because we have not yet referred anything to the Committee on Revision; and if we are to adjourn about the last of next week, as nearly all of us hope and believe, it is necessary that something should be referred to that committee to formulate. When they report, the Convention has to act upon their report, and there is very considerable business for that committee, which, in my judgment, will require the labor of that committee for one week. I propose, then, that we take up this file in the order in which it stands in this Convention, and consider these propositions on second reading, and then go ahead with this matter of schedule. From our experience here this morning, we do not know what deadlock we will get into. I hope we will proceed to the file.

THE PRESIDENT. The Convention has been taking up these reports without objection, and they have a right to do it now, if they desire.

MR. MCCALLUM. I object. The Convention has not otherwise ordered, and I call for the file in the order in which it stands. If the Convention desires to proceed in this way, let some gentleman make that motion.

THE PRESIDENT. If the gentleman has any motion to make, let him make it.

MR. MCCALLUM. Is it necessary to make any motion?

THE PRESIDENT. The Chair has announced that the report of the Committee of the Whole on schedule is the matter before the Convention.

MR. MCCALLUM. I move that we proceed to take up the file in the order in which it stands, commencing with the preamble and bill of rights on second reading.

MR. ESTEE. It will not take us probably two hours to get through

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with the balance of the file. There are just two propositions—schedule and State boundary. I hope that the motion will not prevail.

MR. HAGER. Mr. President: We have not got through the file. We have to go through it before we commence at the top again. The rule is to put engrossed bills at the top of the file, but we must go through the calendar before we get back to the top. That is the ordinary rule.

MR. MCCALLUM. The rule says that they shall be taken up in order. The Chair can decide it as a point of order. My point of order is, that that which is at the head of the file comes first in order.

THE PRESIDENT. The Convention has unanimously dispensed with that order.

MR. MCCALLUM. I object to that any farther.

THE PRESIDENT. The Chair decides that the point of order is not well taken.

MR. MCCALLUM. I will submit to the ruling of the Chair, in order that the gentleman may see the effect of it.

SCHEDULE.

THE PRESIDENT. The Convention will proceed to the consideration of the report of the Committee on Schedule. The Secretary will read the amendments of the Committee of the Whole.

THE SECRETARY read all the amendments proposed by the Committee of the Whole, and then the amendment to section two, as follows:

INSTRUMENTS.

"SEC. 2. That all recognizances, obligations, and all other instruments entered into or executed before the adoption of this Constitution to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution."

Concurred in.

THE PRESIDENT. The Secretary will read the amendment to section four.

CIRCULATION OF THE CONSTITUTION.

THE SECRETARY read:

"SEC. 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, eighteen hundred and seventy-nine, on such terms as may be reasonable, select and contract with one newspaper proprietor in each county in this State in which a newspaper is published, for the publication and issuance, once a week for two successive weeks next before said election, in their respective papers as a supplement thereto, the printed copies of this Constitution, as hereinafter provided. The circulation of such papers shall be taken into consideration in making such contracts and selection, and the papers so selected shall issue a number of such supplements equal to the circulation of such papers in this State. In counties containing property of an assessable valuation of ten million dollars or over, not more than three such papers may be so selected. The Superintendent of Printing shall cause to be printed and delivered to the newspapers so selected, in due time for publication thereof, a number of such supplements equal to twice the State circulation of such papers. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine; and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election."

MR. WEBSTER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out all down to and including the word 'papers,' where it occurs in the fifteenth line, and insert the following: 'The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the Post Office address of each registered voter; provided, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State.'"

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. President: It occurs to me, sir, that the plan as adopted by the Committee of the Whole is unsatisfactory. I think, sir, under that plan, under the most favorable circumstances, not more than one half of the qualified voters of this State will receive a copy of this Constitution, while other voters of the State would receive from one to ten, owing to the number of papers that they take through which this Constitution was sent out. Now, sir, the object of this matter is that the greatest number of electors of this State should be informed in regard to the work which we have been doing here. Another point is the cost of this publishing and sending out. I took the trouble to go to the State Printing Office and get a statement from the State Printer in regard to the cost of this work, and I find that the supplements will cost more, or as much at least, as the pamphlets. Now, the plan adopted by the Committee of the Whole provides that the State Printer shall select and contract with a certain number of papers to circulate supplements. Now, sir, we will take three papers which, under this plan, must be selected in San Francisco. The average circulation of these three papers would not be less than twenty thousand each. The Call claims thirty-five thousand. This would make sixty thousand circulation for San Francisco. Take the average of the other sixty-three papers in the State which are to be selected to be one thousand circulation each, including Alameda and Sacramento, and it would make sixty-three thousand additional circulation. Now there would be a sufficient number of supplements furnished to equal twice the State circulation of such papers, which would make the aggregate number to be supplied, at the lowest possible, of two hundred and forty-six thousand supplements. These supplements, according to the estimates of the State Printer will cost eight thousand five hundred and eighty-three dollars. For sending them out through the several papers, there has been different estimates as to what these papers will charge. It is claimed that some of them will do it gratuitously, but the probability is that the rate could not be less than thirty dollars for each; therefore the cost of such circulation would be one thousand nine hundred and eighty dollars, making an aggregate cost of ten thousand five hundred and sixty-three dollars. Now, sir, according to the estimate of the State Printer, for one hundred and fifty thousand copies of this Constitution in pamphlet form, stitched, we have an aggregate cost of seven thousand eight hundred and forty-eight dollars; for mailing, etc., one thousand dollars, making the aggregate eight thousand eight hundred and forty-eight dollars, as against ten thousand five hundred and sixty-three dollars for the supplements—a difference in favor of the pamphlets of one thousand seven hundred and fifteen dollars. The postage on the supplements will be at least equal to the postage on the pamphlets; so that it occurs to me, sir, that it will be much more expeditious and much more satisfactory to have this in pamphlet form than in supplement form, especially when it will cost no more, admitting that the number on the Great Registers of the State equals two hundred thousand. The largest vote polled in this State, which was in eighteen hundred and seventy-six, was one hundred thousand and fifty-five. The vote previous to that was one hundred thousand and twenty-two. But admitting that there are fifty thousand of registered voters in excess of the actual voters, and we have a cost of the pamphlets for two hundred thousand, not greater than the cost of two hundred and forty-six thousand supplements. The trouble with the supplements is that they will not reach more than half the registered voters in the State. Under the plan adopted by the Committee of the Whole, the State Printer has got to enter into negotiations for the purpose of determining what these papers will charge. That will probably consume a month of time. I learn from the State Printer that to print one hundred and fifty thousand pamphlets will take fifteen days, running day and night; and that it will take no additional time to send them out through the mail, because this can be done at the same time the printing is going on. If you print two hundred and forty thousand supplements it will take additional time. Besides, the supplement form would not be convenient to handle and study. It would be torn up a dozen times before it could be completed. If it is in pamphlet form, if the Constitution should be adopted, which we have reason to believe it will be, every qualified voter in the State will have a Constitution in his house, which is subject to his inspection. I think it is not necessary to say anything more upon this subject.

MR. SHAFTER. Mr. President: How is it possible for the State Printer here to know the post office address of every voter in the State? I suppose there is a penalty for opening a package addressed to any person, so that they could not be distributed by postmasters.

MR. WEBSTER. I do not know about the penalty for opening pamphlets, but so far as learning the address of voters is concerned there would be little trouble. The great register gives the precincts, and there are post offices in most of the precincts or townships.

MR. SHAFTER. I do not myself recollect whether there is a penalty affixed to the opening of pamphlets directed to others, but every one will recollect that there are severe penalties for opening letters.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: I earnestly hope that the amendment of the gentleman from Alameda will be adopted. It is necessary, in fact it is indispensable, that we should advertise the Constitution that we are about to adopt here and place it before the people. The mode presented by the committee is to have supplements printed and have them sent out under contracts with newspaper publishers. Now I submit that this plan is entirely, wholly, and utterly inadequate. There is not only a majority, Mr. President, but there is a vast majority of the voters of California, who do not subscribe for any newspaper. They might see a copy of the Constitution or they might not. The proposition of the gentleman from Alameda is to have it printed in pamphlet form and mailed to every voter in the State. The cost will be little more, if any, and it is the most thorough means of getting the Constitution before the people. It would be worth the money it cost the people of California, because it would be bringing before them a matter that is of vast consequence to them and to the State. It would induce them to take an interest in the politics of the country. It would induce them to inform themselves in regard to the fundamental law of the land, and even if the Constitution should be rejected, it would be worth the money it cost. It is a patent fact that the average voter does not take that interest in public concerns that he should do; that he is not as well informed as he should be in order to discharge wisely the great functions of the elective franchise. Now I can conceive of no method that would be so well calculated to induce the average voter to inform himself as this proposition of sending the Constitution in pamphlet form to every voter in the State. I hope that this amendment will be adopted.

MR. CAMPBELL. Mr. President: So far as the suggestion made by the gentleman from Marin is concerned, it will be observed by reference to the Act of Congress on that subject, that the objection has no force. This clearly would not come, in my judgment, within the meaning of that Act. But if it could, by any possibly strained construction, it would be very easy to indorse in print upon the wrapper: "If not called for

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within ten days, deliver to any person applying for it." That would obviate every possible objection that might remain.

The amendment was adopted.

The amendment of the committee, as amended, was concurred in.

POLL BOOKS.

THE PRESIDENT. The Secretary will read the amendment of section six.

THE SECRETARY read:

"SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable poll books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; provided, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county."

MR. BLACKMER. Mr. President: I move to amend section six as amended in Committee of the Whole, by inserting before the words "poll books," in line four, the word "registers." It is a fact that, in many counties in this State, the registers were all used up at the last election for delegates to this Convention, and unless we make it obligatory upon the Clerks to furnish the Election Board or the Inspectors with registers, there will be a probability of some of the counties being without them at that time and unable to furnish them. I think the amendment will commend itself to the judgment of a majority of this Convention.

The amendment was adopted.

The amendment of the committee as amended was adopted.

CANVASS OF RETURNS.

THE PRESIDENT. The Secretary will read the amendment to section eight.

THE SECRETARY read:

"SEC. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California."

Concurred in.

FUTURE ELECTIONS.

THE PRESIDENT. The Secretary will read the amendment to section ten.

THE SECRETARY read:

"SEC. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as in this Constitution provided; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law."

MR. MORELAND. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add to section: 'Judicial officers and the Superintendent of Public Instruction shall be elected at the time and in the manner that State officers are elected."

MR. MORELAND. Mr. President: That amendment is offered for the purpose of getting around the difficulty of having a special judicial election. It would bring the election at the same time that the other State officers are elected.

The amendment was adopted.

MR. HERRINGTON. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section ten as follows: Add at end of section, after the word 'laws,' the following: 'and the first term of all county officers so elected shall commence at the close of the term, now fixed by statute, of their respective predecessors in office.'"

MR. HERRINGTON. Mr. President: The terms of many of the county officers in this State terminate on the fourth of March. As we have provided in the Constitution, the officers to be elected will enter upon their duties in January. It would be an injustice to turn all these gentlemen out of office for even the period of a month and a half or two months, as would be the case in this instance, if these officers enter upon the discharge of their duties in January. Under this provision that injustice may be avoided, and I think it is the duty of this Convention to do so, where it can be done without inconvenience and without lumbering up this instrument.

MR. ROLFE. Mr. President: By the provisions of this Constitution we turn out of office several Supreme Judges, twenty State Senators, and numerous other State officers and all the Judges of the District and County Courts. Now, I do not know as it is any more unjust to turn out of office a County Clerk than it is a County Judge, District Judge, Supreme Judge, or a State Senator, or any other officer. I took occasion here, at a former time, to express my objections to turning men out of office, legislating them into office, any more than we could possibly help. The Convention has adopted another rule, and I say, in the language of my friend from San Francisco, what is sauce for the goose is sauce for the gander.

MR. LARKIN. That amendment would extend the term of office.

MR. ESTEE. You will mix the thing all up.

MR. HERRINGTON. They won't go out of office until the fourth of March.

MR. HAGER. This amendment will not do in the shape it is in. It would carry over the County Judges, too. If it is expedient to extend the term of any officer, like the Assessor, or Tax Collector, let them be named.

The amendment was rejected.

The amendment of the Committee of the Whole was concurred in.

TO TAKE EFFECT.

THE PRESIDENT. The Secretary will read the amendment to section eleven.

THE SECRETARY read:

"SEC. 11. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian."

MR. BEERSTECHER. Mr. President: I hope that an opportunity will be given to amend this article. As the matter now stands, if I understand the reading correctly, the provisions relate merely to officers elected under this Constitution.

THE PRESIDENT. The section is not before the Convention.

MR. BEERSTECHER. I will come around to it. Now, sir, section eleven says that this Constitution shall take effect and be in force on and after the fourth of July, eighteen hundred and seventy-nine. But as far as the election of officers is concerned, this article does not relate to county officers at all. It relates merely to State officers. You fix the terms of county officers, and then you have got to have your county and city elections long after the Constitution went into effect.

MR. ESTEE. That is so. What of it?

MR. BEERSTECHER. Well, we want them all at the same time.

MR. MORELAND. Mr. President: I send up an amendment.

THE SECRETARY read:

"Add to section: 'so far as it relates to the election of the officers named in this Constitution, and those who have been heretofore provided for, and not prohibited or superseded by this Constitution; but as to all other matters and things, the same shall take effect and be in force on the first day of February, eighteen hundred and eighty, at twelve o'clock meridian.'"

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

SCHEDULE CONTINUED.

THE PRESIDENT. The question is on the amendment of the gentleman from Sonoma, Mr. Moreland.

MR. ESTEE. Mr. President: I offer an amendment to take the place of the amendment of the gentleman, with his consent.

THE SECRETARY read:

"Add at the end of section: 'so far as the same relates to the election of all officers heretofore provided by laws, and who are not named or provided for in this Constitution; and also such officers who are named in this Constitution, the commencement of the terms of officers, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.'"

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: This amendment changes it until the first day of January, eighteen hundred and eighty. That is the shortest period that it is possible to fix for the Constitution to go into effect for all purposes. That is the day of the meeting of the Legislature. The reason for that is this: that we have made changes in the system of taxation and the judiciary system. It will be impossible to make the new Constitution work harmoniously until after the Legislature meets. Something of this kind must be adopted.

THE PRESIDENT. The question is upon adopting the amendment to the amendment offered by the gentleman from San Francisco, Mr. Estee.

Adopted.

MR. VAN DYKE. I wish to offer a new section.

THE PRESIDENT. Not in order at present. The question is upon concurring with the Committee of the Whole in their amendment to section eleven as amended.

Concurred in.

MR. VAN DYKE. Mr. President: I now offer a new section.

A CODE COMMISSION.

THE SECRETARY read:

"Amend by adding the following section: 'SEC. 12. Immediately after the adoption of this Constitution, the Governor shall appoint three persons, learned in the law, as Commissioners, whose duty it shall be to carefully examine the various Codes and general laws of this State,

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and prepare such amendments thereto, or any portion thereof, as may be necessary to adapt the same to the provisions of this Constitution, and submit a report of their work to the Legislature first to assemble under this Constitution, during the first week of its session. The said Legislature shall provide for defraying the expenses of such Commission.'"

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: It must be apparent to all the members of this Convention, that when this Constitution goes into effect the revision of a code and general laws will be necessary, and some amendments made in order to adopt them to the changed condition of the fundamental law. It will be impossible for the Legislature to do it unless by and through its committees; and it will take probably a month or two of the session of hard work on the part of the Judiciary Committee, of either house, to go through the codes and the general laws, and suggest necessary amendments. Now, I have seen this in one of the papers, and it struck me as a very useful suggestion. Here three men can do the work of the Legislature for a month or two. It will be a matter of economy and will expedite matters. We have abolished District and County Courts, and established Superior Courts. It will be necessary to change the laws in that respect. It seems to me the suggestion is a wise one and ought to be adopted. It is a matter of economy in every sense of the word.

MR. LARKIN. Mr. President: This amendment would obviate the necessity of calling the Legislature together. I am opposed to it. We will elect a Legislature who will come here for the very purpose. The general laws of the State require no material change.

MR. WHITE. I wish to offer an amendment.

THE SECRETARY read:

"Provided, the expense of such commission shall not exceed five thousand dollars."

MR. VAN DYKE. Say ten thousand. That is reasonable.

MR. HAGER. Mr. President: I hardly think it is necessary for us to put a section of that kind in the Constitution. Suppose we say, that all laws in force at the time of the adoption of the Constitution, applicable to the District and County Courts, shall be applicable to the Superior Courts until changed by the Legislature. That is the whole thing.

THE PRESIDENT. The question is upon the amendment to the amendment offered by the gentleman from Santa Cruz.

Lost.

THE PRESIDENT. The question is upon the adoption of the new section.

Lost.

MR. HAGER. Mr. President: I will offer this as a new section.

THE SECRETARY read:

"SEC. —. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by the Legislature."

THE PRESIDENT. The question is on the adoption of the new section.

Adopted.

BALLOT PAPER.

MR. REYNOLDS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section five as follows: 'The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of the legal ballot paper now on hand to carry out the provisions of this section.'"

MR. REYNOLDS. Mr. President: This is offered for the purpose of enabling the Superintendent of Printing to comply with the duty imposed upon him by this section. The State Printer has no ballot paper, and the Secretary of State has. It is the only paper there is in the State.

Adopted.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Brown, Doyle, Tully, and Hunter.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried, by a vote of 64 ayes to 33 noes.

THE PRESIDENT. The question is: Shall this article be ordered engrossed and read a second time?

So ordered.

STATE BOUNDARY.

THE PRESIDENT. The Secretary will read the article on State boundary.

THE SECRETARY read:

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

MR. ROLFE. Mr. President: I move to amend by inserting, after the word "also," in line fourteen, the word "including." That was suggested to me by Judge Shafter. I presume it is correct.

MR. ESTEE. Does that take in the Sandwich Islands?

MR. TULLY. That is a land grabbing scheme.

The amendment was adopted.

THE PRESIDENT. The question is: Shall this article be engrossed and read a second time?

So ordered.

DISTRIBUTION OF POWERS.

THE PRESIDENT. The Secretary will read section one of the article.

THE SECRETARY read:

"SECTION 1. The powers of the Government of the State of California shall be divided into three separate departments—the legislative, the executive, and judicial, and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases as in this Constitution is expressly directed or permitted."

Concurred in.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section two. The Secretary will read.

THE SECRETARY read:

"SEC. 2. The Legislature may provide that cases submitted in the Courts shall be decided within a limited time, under such conditions as may be provided by law."

Concurred in.

THE PRESIDENT. The question is: Shall this article be ordered engrossed and read a second time?

So ordered.

STATE INDEBTEDNESS.

THE PRESIDENT. The Secretary will read the article on State indebtedness.

THE SECRETARY read:

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

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole.

Concurred in.

THE PRESIDENT. The question is: Shall the article be ordered engrossed and read a second time?

So ordered.

MISCELLANEOUS SUBJECTS.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole.

THE SECRETARY read the amendment, and then read section two:

DUELING PROHIBITED.

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

MR. CROSS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words, 'or engage in a prize fight.'"

MR. CROSS. Mr. President: It is said that a Constitution is a historical work, as well as a political work. It will not be to our credit to have some future generation read such a provision as this. It seems to me it is trivial. The class of men who run for office are not the class who engage in prize fights. If we want prize fighters in office I think we should have the right to put them there.

MR. HAGER. Mr. President: It would be a reflection upon the State of New York which sends a distinguished prize fighter to Congress. I think this is going too far.

The amendment was adopted by a vote of 53 ayes to 44 noes.

MR. LARKIN. I move to strike out the whole section.

THE PRESIDENT. Not in order. The question is upon concurring with the amendment of the Committee of the Whole, as amended.

Concurred in.

IN RELATION TO MARRIAGE.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section seven.

THE SECRETARY read:

"SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect."

Concurred in.

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BRIBERY AND SUFFRAGE.

THE PRESIDENT. The Secretary will read the amendment of the Committee of the Whole to section eleven.

THE SECRETARY read:

"SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice."

MR. O'SULLIVAN. I move to amend by adding after "forgery," the word "malfeasance."

MR. VAN DYKE. Is not that a high crime, covered by the present section?

MR. O'SULLIVAN. Yes, but this defines it in the Constitution.

Division was called for, and the amendment was adopted by a vote of 46 ayes to 37 noes.

THE PRESIDENT. The question is on concurring with the amendment of the Committee of the Whole as amended.

Concurred in.

MECHANICS' LIENS.

THE PRESIDENT. The Secretary will read section fifteen.

THE SECRETARY read:

"SEC. 15. Mechanics, artisans, laborers, material-men, and miners shall have liens upon the building, structure, mine, or other improvement upon which they have performed labor or supplied material, for the value of the work done or material furnished. And the Legislature shall provide by law for the speedy and efficient enforcement of such liens, making such building, structure, mine, or other improvement, and the owner thereof, responsible for such liens notwithstanding any payment, settlement, or contract made by him with contractors or subcontractors before such liens have been paid; provided, that such claim of lien shall be filed in the office of the County Recorder within sixty days after the completion of such building, structure, or work, or the furnishing of such material."

MR. HERRINGTON. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the word 'liens,' in line seven, and insert 'value of work done, or material furnished.'"

MR. HERRINGTON. This is to correct the reading of the section. I suppose of course it is intended to make the building responsible for the labor and material, not for the lien.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I suppose it is hardly worth while for me to say anything about this section. I simply want to call attention to the fact, that under this section no man can make a contract to build a house. If he does, he cannot pay a cent of money on it until sixty days after the completion of the contract. It will be unsafe for any man to let a contract to build a house, unless he provides in the first place that not a cent of money shall be paid until sixty days after the completion of the building. I think it is much better to let this matter rest with the Legislature, where provisions can be made in detail. The owner cannot know what is going on. He wants to make a contract on the best terms, and he cannot get as good terms for credit as he can for cash. We have not room in the Constitution to go into details, and it is much better to say that the Legislature shall pass a lien law than to undertake to enact a lien law in the Constitution.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I am anxious that every man who labors or furnishes material should have the best lien that the law can give him. I am also anxious that the man who owns property shall not have it taken away from him without his consent or knowledge, and in some reasonable way. I oppose this section for the reason that it accomplishes neither of its purposes. It does not secure the laboring man as well as the present provisions of the Code, and yet, while it does not do that, it opens the door for a possibility that a man's property may be taken from him without his consent or default in any way. Now, there are a large class of cases in which the men who do work and furnish material will have no security whatever, except the personal security of the person who employs them. This is not Constitution making, it is Constitution tinkering. Let us do some Constitution making, and stop this tinkering. I think it is much better to have a simple provision in here that the Legislature shall provide by law for securing mechanics and material-men, by giving them liens upon the property. This section will not help them to get their pay. It will have the opposite effect in a large number of cases. I cannot support this amended section, because I believe it is not as good as the present provision of the Code. The Legislature has been trying for a number of sessions to make a perfect lien law, and they have now a very good one on the statute books. I do not want to go backward and put in a Constitutional lien law that will be imperfect.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I agree with Mr. Cross, that the Legislature, for the last fifteen years, in answer to the demands of mechanics and laboring men, has been trying to make a good lien law. At every session, the mechanics of San Francisco send a man here for the purpose of getting the lien law in good position; the result has been confusion worse confounded all the time. This whole thing is infirm in principle; they want to make the man who is going to build a house, the insurer for the fulfillment of a contract with a third person. Now, there is no contract between the owner of a building and the laborers, none whatever; he has a contract with the contractor, it begins and ends with him, he has nothing to do with the persons whom the contractor employs; this thing is all wrong. Now, this is not as good a lien law as the present law on the statute books, as has been pointed out by the gentleman from Nevada, while it is likely to work great wrong and injustice in many instances. There is no lien on the real estate whatever, it is expressly confined to the building or mine. The owner is made liable personally for the payment of all the labor and material furnished, though he has no control over the laborers, and nothing to say in the purchase of the materials; this provision makes him personally responsible—it is a fraud; at all events it ought to be confined to the amount of material and labor furnished. Now, how is the contractor to work? He must pay his men from day to day, and yet he cannot receive a dollar until sixty days after the completion of the contract. There is no man in his senses, who will take a contract under any such terms. There is no man in his senses, who will undertake to put up a building under such a law. Now, I am opposed to it. If gentlemen will get up something reasonable that will protect the laboring man and not destroy other interests, I will support it, but not this thing.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I am much pleased to find the gentleman from Marin coming over to our side to help us, but I am afraid the kind of help he offers will not do us much good. Now, I wish to offer an amendment to make it include the land belonging to such building, structure, mine, or improvement. That will obviate some of the objections raised. I will ask Mr. Barbour to accept the amendment.

THE PRESIDENT. The gentleman cannot accept it.

MR. WELLIN. It is rather foolish to go over the same arguments that were gone over in the Committee of the Whole. The gentleman says that this will injure the workingmen. Well, I as one of them know what they want in order to protect themselves. It may be that frauds will occur on the other side. I am in favor of guarding against them also. But it must be remembered that wealthy men always have the means of protecting themselves. It is an easy matter for them to require and obtain security that will secure them against loss. There is no danger of trouble so long as the contractor is compelled to deal honestly with the workmen. I want to call attention to the fact that the same kind of a law as this has applied to ship building for two hundred years, and there has been no complaint of wrong done by reason of it. The ship cannot leave the harbor till every plank is paid for. She could not go on to the dock to buy supplies till the work has been paid for. But if this section is not as perfect as it ought to be, then it would come with much better grace if these gentlemen would come forward and give us the benefit of their legal knowledge. I would be glad to have gentlemen like Judge Shafter give us the benefit of his knowledge and experience. All we ask is just what is fair and right, and we shall not be satisfied unless we get it. I can assure you that it will make a vast difference in the vote on the Constitution whether this section is put in or not.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. President: There are three propositions involved in this. In the first place you must consider whether section fifteen, as reported by the committee, is better than the statute which exists to-day, or not. If not, whether section fifteen, as amended by the Committee of the Whole, is better than section fifteen, as reported by the committee. Now, I think if these Workingmen will pay a little more attention to the lawyers, and give the lawyers a little more credit for honesty, they will arrive at better conclusions on this question. Now, the statute as it stands to-day, not only gives the mechanic a lien upon the structure, but upon sufficient land around it to make it convenient to use the structure. That is the law to-day. You will find it in section eleven hundred and eighty-five of the Code of Civil Procedure. Now, the section reported by the committee gives the mechanic a lien upon the property. Not only a lien upon the structure, but upon the land itself. It reads, as follows:

"SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of said liens."

Now, the section which the Workingmen themselves have offered, reads as follows:

"SEC. 15. Mechanics, artisans, laborers, material-men, and miners shall have liens upon the building, structure, mine, or other improvement upon which they have performed labor or supplied material, for the value of the work done or material furnished. And the Legislature shall provide by law for the speedy and efficient enforcement of such liens, making such building, structure, mine, or other improvement, and the owner thereof, responsible for such liens notwithstanding any payment, settlement, or contract made by him with contractors or subcontractors before such liens have been paid; provided, that such claim of lien shall be filed in the office of the County Recorder within sixty days after the completion of such building, structure, or work, of the furnishing of such material."

I say section fifteen, as reported, is better than the statute, because it gives a lien upon the whole property. The section gives them a lien upon the whole property, and if the building is pulled down or destroyed, the lien still holds good. That is what the mechanics want. I myself think it goes too far, but the other does not go far enough.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. President: I am in favor of the amendment suggested by the gentleman from Santa Clara, Mr. Herrington—that is, that the property shall be liable for the value of the labor and material

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put upon it. I would then be in favor of striking out, in line six, "and the owners thereof," making the property responsible for the material which goes into it and the labor bestowed upon it. Now, sir, I am in favor of a declaration in this Constitution in favor of a live lien law. I think it is just as necessary as a declaration in favor of homesteads. It is true that the Legislature can provide for a lien law without such a declaration. Nevertheless, all the modern Constitutions come up to the demands of the times and put this declaration in. Several of the new Constitutions have declared in favor of a lien law. I refer you to the Constitutions of North Carolina, Georgia, and Texas. I think we should not adjourn without putting in a similar declaration here. They do not go into details. It has been said here that the Legislature has been tinkering at this every session. I am aware of that. But the lien laws have been evaded and rendered useless by construction, and have been practically frittered away. The present lien law is of no practical benefit whatever. It was intended when passed, in eighteen hundred and sixty-eight, to be of some value. The Codes went into effect and stripped it of all its value. An effort was made in eighteen hundred and seventy-four to restore it, but still the Supreme Court have construed it to be dependent upon the contract. The result is that the owner colludes with the contractor, and the laborer finds there is nothing due on the contract. For all the benefits that flow from it the law might as well be abolished. The laboring men are thus often swindled out of their just compensation, and under the present state of things there is no help for it. I am in favor of a law after the style of the United States maritime law, which is just to all concerned. That law has existed for centuries. But I am not willing to go to the extreme of holding the owner personally liable beyond the value of the work done or the material furnished, which is amply secured by a lien on the property. It is a singular fact that the lien law in this country had its origin in Washington, at the time that city was selected as the site for the national capital. It was recommended by Thomas Jefferson, for the purpose of securing parties who did the building the value of what was put into the building. It is a principle founded in justice. It is just and proper that the laborer should be paid for his services, and that the man who furnishes material should have a lien upon the property.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: None of the objections to this section reach to the great question involved. Gentlemen seem to desire to destroy the utility of this section. One gentleman remarked that we should determine whether this section is better than the present statute. I admit that the present statute, so far as it is possible to judge from the proper meaning and interpretation of language, is as good a thing as mechanics could ask for. But on account of the construction put upon it by the Courts, it is not worth the paper it is written on. We want a declaration in the Constitution that no payment by the owner or his agent shall work a discharge of a lien. That is what we want in the Constitution. Now, all these objections are technical objections. These gentlemen must have been educated in a technical school. Now, they object because we do not include the land. You cannot hold the farmer's land if the building should be burned down before it has been delivered to him. There is no intention here to make a Code in the Constitution. The intention is to put in a declaration here, that the lien shall be valid notwithstanding any contracts made. Is not that a plain enough proposition? If gentlemen are in favor of a lien law, let them say so. If they are opposed to it, let them vote against it. That is all there is about it. The intention is to give to the laboring men a lien similar to that which the United States gives to her seamen, by which they can rely upon the ship for their wages. The theory of a mechanics' lien law is that he has performed labor upon a structure and improved its value. It contemplates that a man who has put his labor into a thing and increased its value, on that thing he has a lien until his services are paid for.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: I offered a proposition, number four hundred and seven, which seems to be the framework of this proposition. That proposition was referred to the Legislative Committee and was rejected. The same proposition, and others, were referred to the Committee on Miscellaneous Subjects, which reported this section fifteen which, perhaps it is proper to say, is the lien law petitioned for by the mechanics, as shown by their petitions now on file. After I saw these petitions I did not deem it my duty to go behind them. I find, however, that the minority of that committee have reported proposition four hundred and seven, with some amendments, which has been adopted by the Committee of the Whole. Now, the amendments have not improved the proposition materially. The better course will be not to adopt the recommendation of the Committee of the Whole, leaving section fifteen stand, and then amend that section. In eighteen hundred and sixty-eight a mechanic's lien law was passed, which gave satisfaction; that law had provisions similar to the law which passed in eighteen hundred and seventy-four, which held that the contractor should be held to be the agent of the owner; and had that law been valid, no better law for the mechanics could be wanted, but the Supreme Court, disregarding the last section, say that the owner who pays the contractor in accordance with his contract, in the absence of any fraud or collusion, who, still being held liable, would be a violation of the contract. That would be impairing the obligations of a contract. Now, my own judgment would be, to take section one thousand one hundred and eighty-three of the Code, which enumerates other improvements besides those mentioned, and provides for a lien upon sufficient land for the use of the building. Now, I propose to vote against this amendment of the Committee of the Whole, in the hopes that section fifteen may be amended and made effective.

THE PREVIOUS QUESTION.

MR. BIGGS. Mr. President: I am a fair mechanic myself; I have cut some timber, I know something about it, therefore I move the previous question.

Seconded by Messrs. McConnell, Davis, Estee, and Brown.

THE PRESIDENT. The question is: Shall the main question be now put?

Division was called for, and the Convention refused to order the previous question by a vote of 43 ayes to 50 noes.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I think the amendment adopted by the Committee of the Whole is imperfect. I don't know when it can be said that a mine is complete. This is a lien on the mine, building, etc., and is good for sixty days after it is completed. But this would be a very uncertain thing. Now, I had some experience in this matter when we were building the University. The contractor would have to wait until the expiration of the time allowed by law before he could get his money. He was subjected to great inconvenience. The laborers could not get their money because the contractor could not pay, and so they, themselves, were the sufferers by it. Now, I knew a case where a man put up a barn. He thought it was all right, and paid the full amount to the contractor. Afterwards a lien was filed for the full value of the building. The result was that there was a lawsuit, and the claimant took possession of the building. The owner was so indignant that he let it be sold, and built another barn. There ought to be some certainty about these liens, as well to the man who owns the property as to the man who does the work. Now, as to a mine. When can you say that a mine is finished? The work is continuous. Now, we should say here that there shall be a lien law; but as to the details, that should be left to the Legislature, so that when any mistake is made it can be corrected.

REMARKS OF MR. FARRELL.

MR. FARRELL. Mr. President: I was in hopes that this section would be adopted, as reported by the Committee of the Whole. I have no objections to the Herrington amendment, but, sir, I do object to this mode of offering amendments for the purpose of tearing this section to pieces. Now, sir, the principal object of this section is to place some responsibility upon the owner of the property. As the matter stands now there is no responsibility upon his part at all. He takes no interest in it so long as the building is completed and turned over to him. The responsibility for the whole matter is left in the hands of the architect. This will place such a responsibility upon the owner that he will take an interest in the matter, and see that the bills are paid. Before he makes a final settlement he can require the contractor to hand in receipted bills for all work done and material furnished. I hope the section will stand.

THE PRESIDENT. The question is on the adoption of the amendment to the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

Adopted.

MR. VAN DYKE. Mr. President: I offer an amendment.

THE SECRETARY read:

"Strike out the words, 'and the owners thereof,' in line seven, and in line eight strike out 'him,' and insert 'the owner.'"

MR. VAN DYKE. This is something like the maritime law. It holds the property for what is put into it. I wish to rest this upon the same basis as the Pennsylvania lien law. It is founded upon the maritime law. Now, the contractor engages men. These men have a personal claim against him, but not against the owner. They have a lien on the property. That is the proper manner in which to construct a lien law. I hope that amendment will be adopted. I do not see the justice of holding the owner responsible personally.

MR. JONES. Mr. President: If we are to adopt anything I desire that it shall be made practicable as far as possible, and I want to remove what I consider fatal objections. The amendment offered by the gentleman from Alameda goes further to remove such objections than any other measure. I hope it will be adopted, for without it the section goes to an unreasonable extent—far beyond what any reasonable man ought to ask.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Alameda.

Division was called for, and the amendment was adopted by a vote of 45 ayes to 38 noes.

MR. AYERS. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert before 'building,' in line two, the word 'crop.'"

MR. AYERS. Mr. President: There have been efforts made here to protect laborers and artisans to the utmost extent of constitutional power. I now propose to protect those who work on ranches, that they may have a lien upon the crops which their labor helps to produce. It is as just as any of the others, and I hope it will be adopted.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Hunter, Tully, Weller, and Tuttle.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried—ayes, 57; noes, 32.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Los Angeles.

The ayes and noes were demanded by Messrs. Estee, Ayers, Hilborn, Barton, and Prouty.

The roll was called, and the amendment rejected by the following vote:

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AYES.

Ayers,	Freud,	Murphy,
Barton,	Garvey,	Nelson,
Beerstecher,	Herold,	O'Sullivan,
Blackmer,	Herrington,	Pulliam,
Boggs,	Hilborn,	Ringgold,
Boucher,	Hitchcock,	Shafter,
Burt,	Jones,	Smith, of San Francisco,
Caples,	Kleine,	Sweasey,
Chapman,	Larkin,	Swenson,
Cross,	Mansfield,	Vacquerel,
Crouch,	Martin, of Santa Cruz,	West,
Dowling,	McConnell,	Wickes,
Filcher,	McFarland,	Wilson, of Tehama,
Freeman,	Mills,	Mr. President—42.

NOES.

Andrews,	Howard, of Mariposa,	Rolfe,
Barbour,	Huestis,	Schell,
Barry,	Hunter,	Schomp,
Bell,	Inman,	Shurtleff,
Biggs,	Joyce,	Smith, of Santa Clara,
Campbell,	Kelley,	Smith, of 4th District,
Casserly,	Kenny,	Stedman,
Condon,	Lampson,	Stevenson,
Davis,	Larue,	Stuart,
Dean,	Lavigne,	Swing,
Doyle,	McCallum,	Thompson,
Dunlap,	McComas,	Tinnin,
Estee,	McNutt,	Tully,
Estey,	Moffat,	Turner,
Farrell,	Moreland,	Tuttle,
Glascock,	Morse,	Van Dyke,
Gorman,	Nason,	Walker, of Marin,
Grace,	Neunaber,	Walker, of Tuolumne,
Hager,	Ohleyer,	Waters,
Hall,	Porter,	Webster,
Harrison,	Prouty,	Weller,
Harvey,	Reed,	Wellin,
Heiskell,	Reynolds,	White,
Holmes,	Rhodes,	Wyatt—72.

THE PRESIDENT. The question is upon concurring with the amendment of the Committee of the Whole, as amended.

The ayes and noes were demanded by Messrs. Barbour, Grace, Doyle, West, and Kelley.

The roll was called, and the Convention refused to concur by the following vote:

AYES.

Barbour,	Herrington,	Ringgold,
Barton,	Hunter,	Shurtleff,
Beerstecher,	Inman,	Smith, of San Francisco,
Bell,	Johnson,	Stedman,
Biggs,	Joyce,	Thompson,
Condon,	Kenny,	Vacquerel,
Estee,	Kleine,	Van Dyke,
Farrell,	Larkin,	Walker, of Marin,
Freud,	Lavigne,	Walker, of Tuolumne,
Garvey,	Nelson,	Webster,
Gorman,	Neunaber,	Wellin,
Grace,	O'Sullivan,	White,
Harrison,	Reynolds,	Wyatt—39.

NOES.

Andrews,	Heiskell,	Prouty,
Ayers,	Herold,	Pulliam,
Barry,	Hilborn,	Reed,
Blackmer,	Hitchcock,	Rhodes,
Boggs,	Holmes,	Rolfe,
Boucher,	Howard, of Mariposa,	Schell,
Burt,	Huestis,	Schomp,
Campbell,	Jones,	Shafter,
Caples,	Kelley,	Smith, of Santa Clara,
Casserly,	Lampson,	Smith, of 4th District,
Chapman,	Larue,	Stevenson,
Charles,	Mansfield,	Stuart,
Cross,	Martin, of Santa Cruz,	Sweasey,
Crouch,	McCallum,	Swenson,
Davis,	McComas,	Swing,
Dean,	McConnell,	Tinnin,
Dowling,	McFarland,	Tully,
Doyle,	Mills,	Turner,
Dunlap,	Moffat,	Tuttle,
Estey,	Moreland,	Waters,
Filcher,	Morse,	Weller,
Freeman,	Murphy,	West,
Glascock,	Nason,	Wickes,
Hager,	Ohleyer,	Wilson, of Tehama,
Hall,	Porter,	Mr. President—76.
Harvey,		

IN RELATION TO INSURANCE.

THE PRESIDENT. The question is on concurring with the Committee of the Whole in striking out section sixteen. The Secretary will read.

THE SECRETARY read:

"SEC. 16. The amount named in either a fire or marine insurance policy shall be deemed to be the true value of the property insured, for insurance purposes."

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: I hope that will not be stricken out. That is one thing that is settled in all commercial affairs, and that is that the principal is responsible for the acts of an agent. If an insurance company sends out an agent to solicit insurance, and takes the money of an individual, I say the company should be responsible for the risk paid for. It has been the custom of insurance companies in this State to send out agents to solicit business, and obtain money from persons, and when the property is destroyed pay them perhaps thirty per cent. of the value of the property destroyed. I say it is an outrage, and I am in favor of adopting this section.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: In addition to what has been said by the gentleman, I wish to say that I believe it is in the interest of the people of this State to adopt this section. We have been trying to protect the people against other combinations of capital, and yet, when we come to protecting them from the encroachments and swindles of these insurance companies, we are met with a refusal. Now, in regard to the objections urged the other day against this section, that it would encourage the destruction of property for the sake of the insurance, it seems to me the reverse would be the result. Now, it holds to reason, that insurance companies govern their actions according to the law, and if they knew that they would be compelled to pay the full amount of the policy on the destruction of the property, that very fact would induce them to adopt a system of self-protection, and take smaller risks than they do at present. Certainly, they would lay down the rule that property should not be taken for more than two thirds of the actual value. They would govern themselves accordingly. Now, sir, the rule at present seems to be this: The agents are paid a certain percentage, and it is to their interest to get all the money they can. That is an incentive for them to place a high valuation on a piece of property. Now, no man pays a premium on a policy, unless he believes he will receive the amount of that policy. But no sooner is the property destroyed than they begin to search for evidence to show that the property was not worth that amount; and whether they establish the fact or not, they nevertheless throw the homeless man into a controversy which he is not able to carry on with a powerful corporation, and he is compelled to take what the company offers him. I say that this provision is right and just, and ought to be adopted in the interest of the people of this State.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I am surprised that a gentleman of so much intelligence as the gentleman from Placer should get up here and advocate such a proposition as this. It is not in the interest of the poor man; it is not in the interest of the rich man, or of any other human being, because it is absolutely ridiculous. I propose to vote against it. Let us see what the result would be. When the property is large there are always two or three policies. Now which one of them is going to be the one? Now what is my friend going to do with this class of cases? Here I have a warehouse full of grain. I ship grain out of it every day. When it was full I got an insurance policy on it. I have insured it for ten thousand dollars, and they agree to pay ten thousand dollars if it is destroyed. Now I ship the grain away, day after day, until there is only one ton left. Now, if that one ton of grain should burn up, the insurance company, under this provision, would have to pay me ten thousand dollars for that one ton of grain. In other words, there would be a premium of nine thousand nine hundred and fifty dollars for me to burn up that grain. It would be putting a premium on dishonesty everywhere. It would be no protection to honest men; it would be an actual premium on crime, on incendiarism. I don't think we can afford to do it. For one I will support no such monstrous proposition. Insurance companies are just like everybody else. I make a bargain with them and, if there is no deception, in ninety-nine cases out of one hundred they pay me in full. But the trouble mostly arises in the insurance of stores. You have a store in the country, and when you get in a stock of goods have it insured. The stock probably runs down, and when low a fire occurs. Now, there is always a question of fact to be determined, as to what the value of the goods is. The owner is not entitled, by any rule of law or justice, to the full amount of that policy unless the goods are there. He is entitled to be paid for just what he lost and no more.

ADJOURNMENT.

MR. McCALLUM. Mr. President: As there is a thin house, I think it would be well to hold an evening session. I will offer the following:

Resolved, That when this Convention adjourns, it adjourn until seven o'clock this evening.

As there is some little difficulty in getting a full vote here, I call for the ayes and noes.

MR. WALKER, of Tuolumne. I move we do now adjourn.

The ayes and noes were demanded by Messrs. Freud, McCallum, Doyle, White, and Condon.

The roll was called, and the motion prevailed by the following vote:

AYES.

Ayers,	Cross,	Hager,
Barton,	Crouch,	Hall,
Beerstecher,	Dowling,	Harvey,
Blackmer,	Doyle,	Heiskell,
Boggs,	Dunlap,	Herold,
Brown,	Estey,	Hitchcock,
Burt,	Filcher,	Holmes,
Campbell,	Freeman,	Jones,
Casserly,	Garvey,	Kleine,
Charles,	Grace,	Larue,

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Lavigne,	Rolfe,	Swing,
Martin, of Santa Cruz,	Schell,	Tinnin,
McFarland,	Schomp,	Tully,
McNutt,	Shafter,	Turner,
Nason,	Shurtleff,	Vacquerel,
Neunaber,	Smith, of 4th District,	Walker, of Marin,
O'Sullivan,	Smith, of San Francisco,	Walker, of Tuolumne,
Porter,	Stedman,	Wilson, of Tehama,
Pulliam,	Stuart,	Wyatt,
Reed,	Sweasey,	Mr. President—61.
Reynolds,		

NOES.

Andrews,	Huestis,	Ohleyer,
Barbour,	Hunter,	Prouty,
Barry,	Inman,	Rhodes,
Bell,	Johnson,	Ringgold,
Biggs,	Joyce,	Smith, of Santa Clara,
Boucher,	Kelley,	Soule,
Caples,	Kenny,	Stevenson,
Chapman,	Lampson,	Swenson,
Condon,	Larkin,	Thompson,
Davis,	Mansfield,	Tuttle,
Dean,	McCallum,	Van Dyke,
Estee,	McComas,	Waters,
Evey,	McConnell,	Webster,
Farrell,	Mills,	Weller,
Freud,	Moffat,	Wellin,
Gorman,	Moreland,	West,
Harrison,	Morse,	Wickes,
Herrington,	Murphy,	White—56.
Howard, of Mariposa,	Nelson,	

ONE HUNDRED AND FORTY-SIXTH DAY.

SACRAMENTO, Thursday, February 20th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Finney,	O'Donnell,
Belcher,	Graves,	Overton,
Berry,	Gregg,	Reddy,
Cowden,	Howard, of Los Angeles,	Reed,
Dudley, of San Joaquin,	Keyes,	Shoemaker,
Dudley, of Solano,	Laine,	Steele,
Dunlap,	Martin, of Alameda,	Terry,
Edgerton,	Miller,	Winans.
Fawcett,		

LEAVE OF ABSENCE.

Leave of absence for four days was granted Mr. Laine.

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

RESOLUTION—THE DEBATES.

MR. HEISKELL. Mr. President: I offer a resolution.

THE SECRETARY read:

WHEREAS, E. B. Willis and P. K. Stockton have in their possession a full and complete stenographic report of the debates and proceedings of this Convention; and, whereas, it may be advisable, in the near future, for the State to possess itself of said report; and, whereas, in such an event, the lack of an official sanction by this body of said report would greatly impair its value and usefulness; therefore be it

Resolved, That the said E. B. Willis and P. K. Stockton be and they are hereby declared the official reporters of the Constitutional Convention of California, held in the years eighteen hundred and seventy-eight and eighteen hundred and seventy-nine, subject to the following restrictions: First, in the event of the State desiring to possess itself of a long-hand copy of said report, it shall be the duty of the said Willis and Stockton, jointly or severally, to furnish the same to the State, and to receive therefor a compensation which shall not exceed ten dollars per day each for the time spent in taking said report, and twenty cents per folio for transcribing the same into long-hand. It shall be the further duty of the said Willis and Stockton, or either of them, in the event of the publication of said report by the State, to furnish each member of this Convention, if desired, a long-hand copy of his speeches and propositions, for revision and correction, before being submitted for publication. Unless the State shall hereafter purchase the said report of the proceedings and debates of this Convention, as above provided, no claim of the said Willis and Stockton, or of either of them, against the State for services already rendered in this Convention, shall have any binding effect or be other than void.

MR. HEISKELL. Mr. President: I have introduced this resolution because I desire these debates to be preserved in some definite and official manner. You will observe that the State is not bound to pay one dollar by this resolution. If the people of the State, through their representatives fresh from the people, should think these debates of sufficient importance to have them published, they will be in a form in which they will be sure of being written out as delivered in this body. I maintain that, notwithstanding the endeavor to traduce this body, the debates have been able, dignified, and respectful. I desire to preserve them, sir, for that reason. Already a prominent author on Constitutions, whose works are read from here from time to time, has sent here asking after the debates of the Convention. That demonstrates the importance of publishing the debates. They are a part of the history of this State now.

Mr. President, that these debates will be correct is evident in this Convention beyond a doubt. We have seen the press of this State garble the reports and even change the language of the articles. We have seen the Convention misrepresented on one page of the Union, and then, on turning over to the reports made by these gentlemen, we have found it correct. The Journals of this Convention have frequently been corrected from their reports. They have reported us correctly always, and have had the courage to stay here and take these reports in full, and they ought to be recognized as the official reporters.

MR. BIGGS. Mr. President: I move that this be printed in the Journal, and made the special order for two o'clock to-morrow.

The motion prevailed.

AMENDMENT TO RULE.

MR. O'SULLIVAN. Mr. President: Yesterday I gave notice that I would offer an amendment to Rule Thirty-three. I now move to amend Rule Thirty-three so it shall read as follows:

"The previous question shall be put when demanded by five members, but shall only include the amendments then pending, and the section and article under consideration shall be open to further amendment."

Mr. President, I propose this amendment because, as the rule operates now, when the previous question is demanded, not only is all further debate cut off, but members who may have important amendments to offer, are completely prevented from doing so. It is bad enough to cut off debate, but the cutting off of all further amendments is simply a despotic curtailment of the rights of members who may happen to be in the minority. It simply involves a question of justice and fair dealing, and I trust the committee will amend the rule as I propose.

MR. ESTEE. Mr. President: I question the propriety of making any change in the rules. If the rules had not been changed from the first, this Convention would have been through with its business. I hope the Convention will vote down this and all other amendments to the rules, and not take up time in considering them.

MR. HERRINGTON. Mr. President: I do not desire to detain this Convention but a moment on this question. But I submit, if it were possible to prevent the captious moving of the previous question, I would be satisfied, and prefer that the rules should remain as they are; but we have witnessed a disposition to captiously move this question, and I am satisfied that this change ought to be made. It is the only safeguard against such provisions as we find with reference to this double-headed Supreme Court, and a few other provisions that we have yet remaining on our hands.

MR. WATERS. Mr. President: I take it for granted, of course, that a good deal of this reference to previous question is directed at me. I receive it in that kindly spirit in which it is given. I confess that, perhaps, in the eyes of some gentlemen upon this floor, a majority of this Convention having ordered the previous question to be put, in order to cut off some of their great views, has been very captious. It is always put to a majority of the Convention. It seems to me that we have been here debating and amending for five months, and it is time we did something. A majority of the Convention has a right at any time to order the previous question, and it is better to move the previous question than to be talked to death.

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MR. SCHELL. Mr. President: I hope that the rule will not be amended. For one, if I may be permitted to refer to myself in this honorable body, I feel like one who has been very nearly talked to death, and I am satisfied, sir, that upon the various propositions and amendments which may be offered in this body for consideration, nothing new will be said. There should be some limit to amendments as well as debate.

The amendment to the rule was rejected.

RESOLUTION—AN ADDRESS.

MR. CROSS. Mr. President: I offer a resolution, at the request of others.

THE SECRETARY read:

Resolved, That a committee of nine be appointed to prepare and report to the Convention an address to the people of the State, carefully reviewing the Constitution presented by this Convention, and indicating the material changes made in the existing Constitution, and that such address be made public in such manner as this Convention shall direct.

MR. BIGGS. Mr. President: I believe that there are two similar resolutions laying on the table. I move that temporarily be laid on the table.

MR. CROSS. There is no such resolution. There is one for a committee of five and one for a committee from judicial districts. I would like to have the subject disposed of. I understand that the Convention is likely to get through with its work by the close of next week. I am no stickler for that particular resolution, and offer it at the request of members. I move that the subject-matter of this resolution be taken up and disposed of.

MR. HUESTIS. Mr. President: There have been two resolutions having the main object in view that this has, introduced and laid on the table. In my judgment, one of the resolutions is better calculated to reflect the wishes and desires of this Convention and advance the interests of this Constitution than that which has just been read. I think it would be proper, if we are going to take up this subject, to pay proper respect to the other resolutions, by taking them up and considering them all at the same time. I would suggest to the author of this resolution this morning, that he should suggest the taking up of all the resolutions, and considering them all at the same time.

MR. BARRY. Mr. President: It seems to me that the number stated in this resolution is all right. The time is near at hand when our labors will be completed, and, considering the fact that there are material changes in the Constitution, I think it is a matter of great importance that the people should know as soon as possible what they are, and they can be better prepared to vote on our work. I believe that this resolution should be now adopted.

MR. VAN DYKE. Mr. President: I think it is no more than right that gentlemen who introduced resolutions on this subject before should have their resolutions considered in connection with this, and I move that the consideration of this question, involving all the resolutions, be made the special order for to-morrow, at ten o'clock. Then gentlemen can consult these various resolutions and inform themselves as to which they want.

THE PRESIDENT. The question is on the motion of the gentleman from Alameda, to make this subject the special order for to-morrow, at ten A. M.

The motion prevailed.

MISCELLANEOUS SUBJECTS.

THE PRESIDENT. The Convention will resume consideration of the report on miscellaneous subjects. The question is on concurring in the recommendation of the Committee of the Whole to strike out section sixteen. The Secretary will read the section.

INSURANCE POLICIES.

THE SECRETARY read:

"SEC. 16. The amount named in either a fire or marine insurance policy shall be deemed to be the true value of the property insured for insurance purposes."

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I know that the insurance companies insure buildings in the most careless manner. They send out agents that take insurance for more than the property is worth. If a building is burned then they try to prove it was insured for more than its value, and in that way swindle the parties out of the policy. This is to guard against swindling, and I am surprised that a man of Mr. Estee's standing in the community would stand up here and say that it is a premium for swindling. It is a premium exactly the other way. They would stop taking insurance on buildings for more than they are worth. It is a fraud upon the public to allow men to go and take these immense premiums all over the country. If there is a loss they go into a lawsuit and refuse to pay. I know it. I have seen it in my own place. There is not a single case decided in our county without a lawsuit, and it costs a poor man more than it is worth for his insurance. A man will get perhaps half he claims at the end of a lawsuit. It is a regular system to fraud the country; and it was not a fair way of meeting this question to say that we who advocate this section are in favor of covering up fraud. It is no such thing. Fraud is fraud, and the law protects the insurance companies in that matter fully.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. President: I hope that this section will be retained so that it can be amended and cured of its defects. I am satisfied that the idea is a good one and intended to protect the people against a business which is bordering on fraud. I will take a case in Sacramento County, in the destruction of the County Hospital. Although the building was entirely destroyed, and it was well known that there was nothin the shape of incendiarism, still the companies refused to pay the county what the policies called for. They had been receiving the premiums all along, but when the property was destroyed, they offered them ten thousand dollars less than they had agreed that the property was worth. Now, sir, the whole system is managed in a loose and unsatisfactory manner. When a person insures his property he has a right to expect to get that money that the agreement names, when the property is destroyed. That is only a fair and reasonable proposition, and I am astonished to hear gentlemen raise so many objections to it. In answer to these objections, it is enough to say that the agreements are so drawn that the companies protect themselves. In regard to the objection raised by some, that it would cause incendiarism, I will state that the business is carried on now in the very manner that causes incendiarism. The new proposition would entirely destroy the cause for incendiarism. In the first place, the insurance agents that go about the country are incompetent to judge of the value of the property, and they make out insurance very largely in excess in the value of the property, whereas, a competent insurance agent would make it out one third less, and therefore a man would be no gainer by destroying the property. Now, if the companies knew that they were obliged to pay the amount named in the policy, they would be sure to employ competent agents, and never take a risk upon property unless they intended to pay the amount of the risk; the result would always be that the owner would take good care of his property. Now, the whole system, as carried on, is a fraud on the people, and gives an immense profit to the insurance companies. This profit is wrung from the working people generally. According to the report of eighteen hundred and seventy-four, there was a profit of over three millions of dollars on the insurance business of California. There is not a case where the property is totally destroyed but what there is a contest, and poor people are compelled to take whatever the companies are willing to give them. The whole system has been managed so as to oppress the people, and we desire now, for once, to say that whatever a company names in the policy shall be the amount that they will be obliged to pay; and let them, instead of insuring for the whole value, insure for that which they mean to pay, and not be receiving money as they now are under false pretenses.

MR. ESTEE. Did you ever know of the amount being more than what the owner asked?

MR. WELLIN. They have no right to insure for more than what the owner asks. I maintain that when they insure a building for the full amount that the owner asks, and he asks more than it is worth, they are offering him a premium to burn that building, and they are partners to the fraud. The agent who permits or guarantees an insurance for more than the property is worth, is offering a premium to a man to burn his property, and destroy his neighbor's property alongside.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I suppose that we all understand that a policy of insurance is a contract, and that it takes two parties to make a contract. A man has property and he wants to get it insured, and he goes to an insurance office and states the value of his property, whatever he may see fit to believe that it is worth. Now, the insurers, they examine the property, and they may say that it is worth so much, or that it is worth less; but if a man overrates his property, I do not see why we should put in a constitutional provision to assist him in perpetrating a fraud. If he does overestimate his property willfully and intentionally, it is a fraud. No man is bound to get his property insured for more than it is worth. I do not suppose there is scarcely any prudent man that gets his property insured for its full value. Generally some of the property is saved before it is totally destroyed, and in that case he gets such damages as he has sustained. Now, this proposition, as offered here, might be operative as to real estate to a certain extent, and that is, that the value of the property fixed in the policy in regard to real estate could be easily established. But in the case of personal property it would not work. Suppose a man had a store full of goods, and insures them at a fair valuation. In the course of three months he sells out one half of the goods, or the whole of them, and the premises are burned down. According to a strict interpretation of this section, in that case the amount named in the policy would be the amount that the company must pay. The insurer could not come in and show that he had disposed of the property, but would have to pay the whole amount named in the policy. This provision does not except even cases of fraud. It ought not to be in the Constitution.

MR. HEISKELL. Mr. President: I would judge from the amount of talk in this chamber, that this debate is not very interesting, therefore I demand the previous question.

Seconded by Messrs. Huestis, Moreland, Larue, and Tully.

MR. FILCHER. Mr. President: I would like to ask unanimous leave to send up a proposition.

The main question was ordered.

Upon concurring in the recommendation of the committee in striking out section sixteen, the ayes and noes were demanded by Messrs. Filcher, Barton, Tinnin, Burt, and Kelly.

The roll was called, and the Convention concurred by the following vote:

AYES.

Andrews,	Charles,	Glascock,
Ayers,	Cross,	Hager,
Barry,	Davis,	Hall,
Beerstecher,	Dean,	Harvey,
Boucher,	Dunlap,	Heiskell,
Campbell,	Estee,	Herold,
Caples,	Estey,	Herrington,
Casserly,	Freeman,	Hitchcock,
Chapman,	Garvey,	Holmes,

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Howard, of Mariposa,	Noel,	Stevenson,
Huestis,	Ohleyer,	Stuart,
Hunter,	Porter,	Sweasey,
Inman,	Rhodes,	Swing,
Johnson,	Ringgold,	Thompson,
Jones,	Rolfe,	Tully,
Lampson,	Schell,	Turner,
Larkin,	Schomp,	Van Dyke,
Larue,	Shafter,	Walker, of Marin,
Lewis,	Shurtleff,	Walker, of Tuolumne,
McComas,	Smith, of Santa Clara,	Waters,
McConnell,	Smith, of 4th District,	Wickes,
McNutt,	Soule,	Wilson, of 1st District,
Moffat,	Stedman,	Mr. President—70.
Moreland,		

NOES.

Barbour,	Harrison,	Prouty,
Barton,	Hilborn,	Reynolds,
Bell,	Joyce,	Smith, of San Francisco,
Biggs,	Kelley,	Swenson,
Blackmer,	Kenny,	Tinnin,
Boggs,	Lavigne,	Townsend,
Burt,	Lindow,	Tuttle,
Condon,	Mansfield,	Vacquerel,
Crouch,	Martin, of Santa Cruz,	Webster,
Dowling,	McCallum,	Weller,
Doyle,	Mills,	Wellin,
Evey,	Morse,	West,
Farrell,	Nason,	White,
Filcher,	Nelson,	Wilson, of Tehama,
Freud,	Neunaber,	Wyatt—47.
Gorman,	O'Sullivan,	

THE PRESIDENT. The Secretary will read the amendment to section seventeen.

TERMS OF OFFICERS.

THE SECRETARY read:

"SEC. 17. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold his position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years."

Concurred in.

THE PRESIDENT. The question is on concurring in recommendation of the Committee of the Whole, to strike out section eighteen. The Secretary will read the section.

HOLDING OF REAL ESTATE.

THE SECRETARY read:

"SEC. 18. No persons other than citizens, or those who have declared their intentions to become such, shall hereafter acquire or own, either by purchase or otherwise, real property in this State contrary to this provision—such property shall escheat to the State; nor shall any lands in this State be held in trust for any alien; but the creation of any trust in lands for the benefit of an alien shall at once escheat the land to the State."

The recommendation of the Committee of the Whole to strike out the section was concurred in.

THE PRESIDENT. The Secretary will read the new section adopted by the Committee of the Whole on motion of Mr. Joyce.

HOURS OF LABOR.

THE SECRETARY read:

"SEC. —. Eight hours shall constitute a legal day's work on all public works."

MR. CAPLES. Mr. President: Upon reading the proceedings had upon last Monday in the Convention, you must have been reminded of some early scenes of school life when the master was absent, and the pupils availed themselves of their privilege of putting an interpretation upon liberty, and construed it to mean license, and forthwith proceeded to prove their faith by their works, in singing songs, throwing books, and turning hand springs over the benches. Mr. President, this is a faint outline of the scene we had last Monday; but now that we have got down to sober work I hope that we will correct the mistakes and blunderings into which we fell on that excited occasion. This new section provides that eight hours shall constitute a legal day's work. Now, Mr. President, suppose that our Granger friends here should come in with an independent section declaring that one thousand five hundred pounds of barley should be a ton. Would we laugh at them? or would we accede to their proposition and put it into the Constitution? Suppose we should do it? what would be the result? Who would be benefited? Would the Granger be benefited? I think not. The proposition is too plain for argument, and this section is precisely a parallel case. Eight hours shall constitute a day's work. What is a day's work, and what is a day's work worth? You may ask the same question in regard to the one thousand five hundred pounds and the ton of barley. It depends upon the market. If eight hours be worth two dollars, by the same rule that all values are determined, by the law of supply and demand, ten hours would be worth two dollars and fifty cents a day. Now, who is benefited by this declaration that eight hours shall be a day's work? Let us see what the result would be. The contractor who can afford to pay two dollars for eight hours work could afford to pay two dollars and fifty cents for ten hours work. The idler who desired to call eight hours a day's work and get two dollars would be satisfied. But the industrious man, perhaps, would prefer to work ten hours and get two dollars and fifty cents. Now, does any gentleman assume that one thousand five hundred pounds of barley is worth as much as two thousand pounds, or that eight hours work is worth as much ten hours; or does he assume that it will command as much practically? If he does, I pity his intelligence. The truth is, Mr. President, that there is nothing in this proposition, but claptrap and buncombe to catch the silly. The time was, I believe, when this cry of eight hours for a day's work was started and advocated in good faith by simple minded ignorant men; but every man of intelligence knows that labor like every other commodity has a value that is determined, not by statutory regulations by any means. Statutory regulations cannot fix the value on anything. It is that greater and higher law of supply and demand that fixes the value of everything, labor included. The time was when the cry was made in good faith, but I venture to say that few to-day are so ignorant as to accept it in good faith. Surely no gentleman on this floor can accept it in good faith, because he knows that ten hours is worth more than eight, and will command more. I hope that we will put no provision in this Constitution that we are making that will bring reproach and contempt upon it. I expect, Mr. President, to defend the Constitution that we shall here make before the people, because I believe that it will be an improvement upon the old one; that it will save a large amount of money to the people of California; and I do not desire to have it thrown in my face when I am upon the stump defending this Constitution, that we have in certain provisions that are beneath the intelligence of any respectable body of men. I do not desire to have it thrown at me that we were incompetent to make a Constitution, and that we have proven that fact by inserting in it propositions that are absurd on their face, and that could not meet the approval of any man of intelligence.

MR. BEERSTECHER. I would ask the gentleman whether he is not aware that this is the law of the State to-day according to the Codes.

MR. CAPLES. The gentleman is a lawyer, and I presume he is correct when he says that it is the law, and I avail myself of the occasion to say that it is a very silly law, and that it has nothing in it but buncombe.

MR. LARUE. Mr. President: I move to amend section nineteen by striking out the word "public" and inserting the word "State." I have no objections to its applying to State work, but in public work of some kinds, such as the building of levees, roads, and bridges, it is often necessary that they should put in a full day's work. On works conducted by the State, I have no objection, but otherwise I think it is not proper.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I hope the amendment will not be adopted, and that the section and the principle involved will not be restricted. Now, sir, I dislike to trespass upon the patience of this Convention, but I feel it necessary to raise my voice here on behalf of labor. This measure, sir, ought to be adopted, and so far as this Convention is able to do so, without pretending to interfere with the private contracts of man, we ought to assert that humane, liberal, and progressive idea that mankind were not made like the beasts of the field, to be brutalized and degraded by excessive labor. It has that effect, sir. Reasonable labor, with time for improvement and relaxation, and for tired nature to rebound and be restored, is what is needed. It is that odious class system, by which one portion of mankind are constantly reduced to the position of serfs while another portion live luxuriously, against which we protest. Now, sir, a constitutional provision of this sort, relates to Courts and all those public matters over which the State does have control. Eight hours labor is enough for any human being, and I desire to see the time, and I believe that the liberal judgment of those who reflect most upon this subject, is to the same effect—that all our efforts should be directed towards producing in this world more laborers and fewer loafers.

REMARKS OF MR. JOYCE.

MR. JOYCE. Mr. President: I was not much surprised to find the gentleman from Sacramento take the position he did, in fact I was very much surprised that the gentleman did not bring in the Chinaman. I was waiting to hear him come to the conclusion that the American laborer should be brought down to the level with the lowest laborer on the face of God's footstool. I expected he was going to show us how much better it would be if the laborer could work twenty hours a day instead of ten. Now, if there is anything that is going to relieve labor and advance the wages of labor, it is a reduction of the hours of labor, and if we do not begin with the public works I do not see how we can accomplish anything. This does not in way apply to the farmers, and they must not be hoodwinked by any argument that this system of labor extends to farm labor. If any man can show us where it extends to farming, I will back down; it simply refers to public works. Now, another reason why I should be opposed to the amendment is simply this: Every man on this floor knows that there is a thousand dollars laid out in doing public work in San Francisco to every one that is laid out in doing State work. This will be a great favor to the laborers of this State. We have sufficient proof that public work has been done to better advantage by the day than what it has by contract. We have shown that public work is done in most of the Eastern States by the day. It is done better, and it is done cheaper, and the work gives better satisfaction. Even when Boss Tweed, in New York, was stealing more than two and one half per cent. of the public funds, the work was generally done well. Twenty-five per cent. does not more than average the amount of stealing that is done under the public contract system. Now, if we had our City Hall done by the day, it would not have to be done half a dozen times over. If we had the street work all done by the day, it would not have to be done twice in one year. I say that if there is anything to be done for the laborer, it is by reducing the hours of labor.

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REMARKS OF MR. CONDON.

MR. CONDON. Mr. President: I cannot afford to let this question pass without expressing a few thoughts upon experience and study upon this great and important question. I am surprised, sir, to hear the expressions made on this floor in regard to this all important matter; a matter, sir, that is not local in its character, but which, sir, has engaged the attention of some of the greatest minds, not alone in the United States, but in Europe. A reduction of the hours of labor is neither a new nor novel question, and, sir, it is one of those great overshadowing questions which it is safe to say will yet, not alone confine itself to eight hours, but eventually come down to six or less. The provision adopted has been wisely restricted in reference to labor on farms, and for private individuals. "Eight hours shall constitute a day's labor on all public works." It has been thoroughly demonstrated, and I defy contradiction, as a mechanic, that to-day any workingman can accomplish more in a week than he could three years ago in one week. That is a fact probably unknown to a majority of men, and especially to farmers on this floor. But this is a fact, Mr. President. That eight hours shall constitute a legal day's work is one of those great problems which I was of the impression that this Convention would heartily endorse. There is not a man, or rather a member of this Convention, who has not on all past occasions presented to the people of this State their avowed intention to redress the wrongs of the workingmen; but unfortunately for them, and unfortunately for them who placed them in power, on every occasion they have been untrue to the trust reposed in them by this very people. And, sir, it is too true that they no longer will be led to the belief that these men are calculated to be real reformers in these matters. They themselves have inaugurated a party which in principle being reform, and not this idea of preaching reform before election and immediately after election repudiate these very principles, and these very promises they had made to the people. These men cannot forget these facts. Men who have occupied high political positions in this State; men who have been before the people and asking for their support and pledged themselves on all occasions to these principles; men here on this floor who in the halls of Congress raised their voices in favor of these propositions, and especially the eight hour law; I would like to hear them now stand upon this floor and speak out their minds, and give expression to what they have reiterated on these past occasions to-day, when this very question is in jeopardy of defeat in this Convention. My friend, Mr. Hager, well I remember when he was elected to the United States Senate, when he was called before the mechanics of San Francisco, there he pledged himself to these reform measures, and particularly to that very plank which is before this Convention at the present time. He was true to his pledge on that occasion; so was Mr. Casserly, and I am sorry—probably I am a little too fast—that they come not to the defense of this proposition. I hope they will, because they have given this matter study. I hope this Convention will adopt the proposition without any change, and that they will reject the amendment offered by the gentleman.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. President: This question of the hours of labor is undoubtedly a very broad one, and upon which a good deal may be said from one standpoint, and a good deal may be said from a different standpoint. I must confess that I listened with some regret, not unmingled with surprise, to the remarks of my friend Doctor Caples, the delegate from Sacramento. I think I have hardly ever listened to him, however much I might disagree with his conclusions, without learning something that I did not know before; and therefore it is that I deprecate, in the case of a gentleman as accomplished and intelligent as he is, the spirit in which he seems to have couched his remarks. Now, sir, this question of the hours of labor is undoubtedly one to which I have given a good deal of attention, and wherever I have been, in public station or in private station, no man can say truthfully of me that I have ever failed in the duty that I owe to the intelligent working people of this country in regard to the hours of labor, or any other idea which interested them deeply. It is not my habit, sir, to make great promises before election and afterwards to give a very small and trifling performance. I believe, sir, that it may be said, without fear of successful contradiction, that the best judgment of the enlightened men who have studied this subject is, that eight hours is a legitimate day's work for a single man. I do not refer now to mere theories, but I tell this Convention what the greatest private employer of labor that ever lived, who at one time had as many as sixty thousand men in his employment, says. He has left behind him the statement that the result of his experience was that working your men eight hours a day, Mr. President, you get more work and better work out of them than if you worked them up to nine or ten hours. I can remember the time when Mr. Van Buren shortened the day's work in the yards of the United States from twelve hours to ten, and I can remember perfectly well hearing, in my father's house, what a disturbance it was thought that would create, and how the employers objected to it, still the law went into effect, and after awhile the private employers followed the example of the greatest employer in the country, which is the country. Everything went along and the employers were not hurt. They found that the work was better done than under the old system. I am perfectly convinced that eight hours for a day's work is the true system both for the employer and for the workmen who are in his employment. It is a very remarkable fact, sir, that the views of the workingmen are thoroughly sustained by the views of the scientific men who have studied this subject thoroughly—especially the scientific men of England and of France—and they have ascertained and determined that eight hours is a proper day's work for a workingman, and under the circumstances, I do not see any occasion for jeering at the views of the workingmen upon this floor. If they are wrong, beat them by fair argument, but I confess that I have but very little patience with the disposition to laugh down a great question like this, which interests so many, by that kind of argument which is no argument whatever. Now, sir, the English gentleman to whom I have referred, was no sentimentalist, far from it; he died worth thirty millions of dollars, you can judge for yourselves what that man's experience is worth. There are two views of this subject; one is the view of the average employer, and that is to get out of his men all the work that he can during the working hours; the other is the view which a great Government should take in dealing with the question, namely, to have the workingman work just so many hours as will maintain his productive powers to the highest point and for the longest average of his life; that is the proposition, and gentlemen should look at it as statesmen and not in the narrow light of prejudice. Sir, whether this proposition fails or succeeds, I shall feel that the Convention, in dismissing it in the spirit in which it seems disposed to dismiss it, will make a very great mistake. But whatever the Convention does, I shall not cease to uphold, in my humble way, my idea of the workingman's day—eight hours for sleep, eight hours for rest, and eight hours for work. That is all I have to say on this question.

MR. BIGGS. Mr. President: I did not propose to say anything upon this question. This is a question I have taken a deep and lively interest in. In eighteen hundred and sixty-seven-sixty-eight we passed a law as it is in the State of California. I indorsed it very cordially, and I must say, as the gentleman who has just preceded me has remarked, that eight hours for work, eight hours for sleep, and eight hours for rest, is what every American citizen should foster and encourage. I was instrumental in having such a bill passed, so that a man could return to the bosom of his family and devote eight hours to recreation.

MR. CAPLES. Has the gentleman ever tried it on his own farm?

MR. BIGGS. I propose to do so.

MR. CAPLES. Do you propose to work your men eight hours?

MR. BIGGS. I propose to work my men from sun to sun upon the farm, and I propose to pay them for the additional hours of labor. Any man has a right to make a private contract for his labor on the farm. This does not have reference to the work on the farm.

MR. CAPLES. That is my position.

MR. BIGGS. God bless the Workingmen of San Francisco! Stand by your guns! You never stood by a nobler proposition. [Laughter.] When you come to defend such a measure as this I am with you. You mean what you say, and stand by it. I want to see every gentleman placed upon the record upon this question. In my harvest field I work all the hours I can. When the tax Collector comes to my men they say: "Go to the old man and he will pay my taxes." I work them whenever necessary, and pay them well; but I think eight hours is sufficient for men to work. How long do you work here? Do you put in eight hours a day?

MR. CAPLES. I work, myself, pretty near fifteen hours a day.

MR. BIGGS. Yes, I do it, and I have done as much manual labor as the gentleman from Sacramento. I propose to do it yet. Whenever any gentleman is not disposed to do that, I cannot look upon him as a friend to the laboring class. You will find about fifteen or seventeen newspapers in the corners where they sleep. I take care of them, and their interest is my interest. I am the friend of the laboring classes, and I do not care what this Convention does. But I propose that my voice shall be heard in advocacy of the interests of the laboring classes, and eight hours is sufficient labor. Doctor Caples, I am surprised at you. [Laughter.]

MR. CAPLES. You represent the laboring classes. Will you tell us how many hours you work your men?

MR. BIGGS. Perhaps from eight to fifteen hours.

MR. MORELAND. How much do you pay them?

MR. BIGGS. I pay from two to four dollars a day. I pay better than most men, and I have a better class of men. How much do you pay your chambermaids? You work them day and night and pay them a dollar a day. [Laughter and applause.] You want to grind down labor. You want to work them twelve hours a day. I can say to the gentleman that whenever it is necessary to work in the night my men are ready and willing to go. I have no need of asking them. I hope that the Convention will put this in the organic law, that eight hours shall be a legal day's work upon all public works. You want to send your amendments in to load it down and kill it. I have seen too much of these amendments. I want to take it just as it come from that committee, and I am going to stand or fall by the same. For God's sake, let that strike the feeling of sympathy which rests in your bosom [laughter], to protect and relieve the burden of the working men, and when you go home your constituents will say, "Well done, thou good and faithful servant." [Laughter and applause.]

MR. ESTEE. And may the Lord have mercy on my poor soul.

MR. REYNOLDS. I move we sing the doxology.

MR. ESTEE. A-men!

Messrs. Hunter, Brown, Holmes, Dean, and Larue demanded the previous question, which was ordered by the Convention.

The amendment of Mr. Larue was rejected.

Upon concurring with the committee, the ayes and noes were demanded by Messrs. Ayers, Joyce, Condon, Grace, and White.

The roll was called, and the amendment concurred in by the following vote:

AYES.

Andrews,	Boggs,	Davis,
Ayers,	Boucher,	Dowling,
Barbour,	Brown,	Doyle,
Barry,	Burt,	Dunlap,
Barton,	Campbell,	Estee,
Beerstecher,	Casserly,	Estey,
Bell,	Condon,	Evey,
Biggs,	Cross,	Farrell,
Blackmer,	Crouch,	Filcher,

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Freud,	Lindow,	Soule,
Garvey,	Martin, of Santa Cruz,	Stedman,
Gorman,	McCallum,	Stevenson,
Grace,	McComas,	Sweasey,
Hager,	McNutt,	Swenson,
Hale,	Moffat,	Swing,
Hall,	Morse,	Thompson,
Harrison,	Murphy,	Tully,
Harvey,	Nason,	Tuttle,
Heiskell,	Nelson,	Vacquerel,
Herold,	Neunaber,	Van Dyke,
Herrington,	Noel,	Walker, of Marin,
Hilborn,	O'Sullivan,	Walker, of Tuolumne,
Hitchcock,	Prouty,	Waters,
Holmes,	Reynolds,	Webster,
Howard, of Mariposa,	Rhodes,	Weller,
Huestis,	Ringgold,	Wellin,
Hunter,	Rolfe,	West,
Johnson,	Schomp,	Wickes,
Joyce,	Shafter,	White,
Kenny,	Shurtleff,	Wilson, of Tehama,
Larkin,	Smith, of Santa Clara,	Wilson, of 1st District,
Larue,	Smith, of 4th District,	Wyatt,
Lavigne,	Smith, of San Francisco,	Mr. President—99.
Lewis,		

NOES.

Caples,	Kelley,	Ohleyer,
Chapman,	Lampson,	Porter,
Charles,	Mansfield,	Stuart,
Dean,	McConnell,	Townsend,
Inman,	McFarland,	Turner—17.
Jones,	Mills,	

THE PRESIDENT. The Secretary will read the new section adopted in Committee of the Whole on motion of Mr. Ringgold.

DISQUALIFICATION.

THE SECRETARY read:

"SEC. —. No person shall, on account of sex, be disqualified to enter upon and pursue any lawful business, vocation, or profession."

Messrs. Ringgold, Murphy, Farrell, Estee, and Condon demanded the previous question, which was ordered by the Convention.

The amendment of the committee was concurred in.

THE PRESIDENT. The Secretary will read the section adopted by the Committee of the Whole on motion of Mr. Dean.

PER DIEM OF DELEGATES.

THE SECRETARY read:

"SEC. —. Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of this Convention, including the per diem of the delegates for the full term of said Convention."

MR. JOHNSON. Mr. President: I move to amend by striking out the words "including the per diem of delegates for the full term of said Convention," and insert "that they shall not receive any other compensation."

THE PRESIDENT. The Chair hears no second to the amendment.

Messrs. Beerstecher, Walker of Tuolumne, White, Burt, and Brown demanded the previous question, which was ordered by the Convention.

Upon concurring in the amendment of the committee, the ayes and noes were demanded by Messrs. Hilborn, Burt, Shafter, Blackmer, and Beerstecher.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Heiskell,	Reynolds,
Barry,	Herold,	Ringgold,
Barton,	Herrington,	Rolfe,
Beerstecher,	Hitchcock,	Schomp,
Bell,	Holmes,	Shurtleff,
Biggs,	Howard, of Mariposa,	Smith, of Santa Clara,
Blackmer,	Huestis,	Smith, of 4th District,
Brown,	Hunter,	Smith, of San Francisco,
Burt,	Inman,	Soule,
Campbell,	Joyce,	Stedman,
Caples,	Kenny,	Stevenson,
Chapman,	Lampson,	Stuart,
Charles,	Larkin,	Sweasey,
Condon,	Larue,	Swing,
Crouch,	Lindow,	Thompson,
Davis,	Mansfield,	Townsend,
Dean,	Martin, of Santa Cruz,	Turner,
Doyle,	McCallum,	Tuttle,
Dunlap,	McFarland,	Vacquerel,
Estee,	Mills,	Van Dyke,
Estey,	Moffat,	Walker, of Marin,
Evey,	Moreland,	Walker, of Tuolumne,
Farrell,	Morse,	Waters,
Filcher,	Murphy,	Weller,
Garvey,	Nason,	Wellin,
Gorman,	Nelson,	West,
Grace,	Neunaber,	Wickes,
Hager,	Noel,	White,
Hale,	Ohleyer,	Wilson, of Tehama,
Hall,	O'Sullivan,	Wyatt,
Harrison,	Porter,	Mr. President—94.
Harvey,		

NOES.

Andrews,	Johnson,	McNutt,
Boggs,	Jones,	Prouty,
Boucher,	Kelley,	Rhodes,
Casserly,	Lavigne,	Shafter,
Cross,	Lewis,	Swenson,
Dowling,	McComas,	Webster,
Freud,	McConnell,	Wilson, of 1st Dist—22.
Hilborn,		

MR. MORELAND. Mr. President: I offer a new section.

ELECTIONS.

THE SECRETARY read:

"SEC. —. Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years, next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday in January next following their election."

MR. MORELAND. Mr. President: I think that proposition is understood, and I offer this amendment to bring the Convention to a vote upon the question.

MR. HAGER. Mr. President: I would like to call the attention of the Convention to one matter in connection with the proposition. I see that it provides that the terms of officers shall commence on the first Monday in January next following their election. In years past we have found that the first Monday was an unfortunate day in this respect. It very often fell on New Years' day. Now, generally people like to be with their families on holidays. Then it is the next day after Sunday. I think if we were to fix the day for the terms of these officers to commence on the first Tuesday after the first Monday, and that the Legislature should convene on the Tuesday after the first Monday, it would be a better time for the terms to commence, and for the Legislature to convene. Otherwise we will have the same trouble that we had under the old Constitution, and probably at an early day propositions will be made to change the time of the meeting of the Legislature, as they did before. The result was that changing and making a different time for the commencement of the Legislature and the term of office, that there was one month came between the meeting of the Legislature and the time that the Judges took their places, and applications could be made for an increase of their salaries before they took their offices. I hope therefore that all of the departments of the Government will be changed so that the terms will commence on the first Tuesday after the first Monday. Some of them have been so changed. We had better have uniformity, and I propose as an amendment here to make it the first Tuesday after the first Monday. Then I hope we will make all the other propositions conform to that time. I send up that amendment.

THE SECRETARY read:

"Strike out the word 'Monday,' and insert 'first Tuesday after the first Monday in January.'"

Adopted.

The section as amended was adopted.

OFFICE SEEKING.

MR. McCONNELL. Mr. President: I offer a new section.

THE SECRETARY read:

"SEC. —. As every freeman, to preserve his independence (if without an estate), ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for nor use in establishing offices of profit, the usual effect of which are dependence and servility unbecoming freemen in the possessors or expectants, creating faction, contention, and discord among the people; but if any man is called into public service, to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office, through increase of fees, or otherwise, becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the Legislature."

MR. McCONNELL. Mr. President: I hope this section will be adopted. Many of the members of this Convention appear to think that we shall be unable to secure officers to carry on our Government in the future if we should reduce the salaries from those established over a quarter of a century ago, when money did not have one half the purchasing power it has to day. Still, I think if the present hard times and shrinkage of values continue a few years longer, the people will be willing to reduce salaries and fees so they will correspond to the present value of money. I only want to live until I may be in some nominating convention when there will not be more than a dozen applicants for every office there is to fill. If that time should ever come, I should expect that the millennium was near at hand, and that the angel Gabriel was about to blow his horn. This section now offered is found in the Constitution of the Government which was once complimented by the great Frenchman, Dr. Tocqueville, as being the best, cheapest, and purest on the face of God's earth. I think the proposed section enunciates a correct principle, and should be incorporated in this Constitution. I trust it will meet the approval of this Convention and be adopted.

MR. ESTEE. I would like to ask the gentleman if he has examined the Constitution of Missouri? Can he find that in the Missouri Constitution?

MR. McCONNELL. No, sir.

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

The amendment was rejected.

Messrs. Dean, Hunter, Brown, Larue, and White demanded the previous question, which was ordered by the Convention.

Upon ordering the article engrossed for a second reading, the ayes and noes were demanded by Messrs. O'Sullivan, Joyce, Kenny, Wellin, and Vacquerel.

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The roll was called, and the article ordered engrossed by the following vote:

AYES.

Andrews,	Heiskell,	Reynolds,
Ayers,	Herrington,	Rhodes,
Barry,	Hitchcock,	Rolfe,
Barton,	Holmes,	Schell,
Biggs,	Howard, of Mariposa,	Schomp,
Blackmer,	Huestis,	Shafter,
Boggs,	Hunter,	Shurtleff,
Boucher,	Inman,	Smith, of Santa Clara,
Brown,	Jones,	Smith, of 4th District,
Burt,	Joyce,	Soule,
Campbell,	Lampson,	Stedman,
Caples,	Larkin,	Stevenson,
Casserly,	Larue,	Stuart,
Chapman,	Martin, of Santa Cruz,	Swing,
Charles,	McCallum,	Thompson,
Cross,	McComas,	Townsend,
Crouch,	McConnell,	Tully,
Davis,	McCoy,	Turner,
Dean,	McFarland,	Tuttle,
Eagon,	McNutt,	Vacquerel,
Estee,	Moffat,	Van Dyke,
Estey,	Moreland,	Walker, of Marin,
Evey,	Morse,	Walker, of Tuolumne,
Filcher,	Murphy,	Waters,
Freeman,	Nason,	Webster,
Garvey,	Noel,	Weller,
Glascock,	Ohleyer,	West,
Gorman,	Porter,	Wilson, of Tehama,
Hager,	Prouty,	Wilson, of 1st District,
Hale,	Pulliam,	Mr. President—91.
Harvey,		

NOES.

Barbour,	Johnson,	O'Sullivan,
Beerstecher,	Kelley,	Ringgold,
Bell,	Kenny,	Smith, of San Francisco,
Condon,	Kleine,	Sweasey,
Dowling,	Lavigne,	Swenson,
Doyle,	Lewis,	Tinnin,
Farrell,	Lindow,	Wellin,
Freud,	Mills,	Wickes,
Harrison,	Nelson,	White,
Herold,	Neunaber,	Wyatt—31.
Hilborn,		

NOTICE.

MR. VACQUEREL. Mr. President: I hereby give notice that, on to-morrow, February twenty-first, eighteen hundred and seventy-nine, I will move to reconsider the vote by which the article on miscellaneous subjects was ordered engrossed for a second reading.

PREAMBLE AND BILL OF RIGHTS.

THE PRESIDENT. The next business in order is the consideration of the article on preamble and bill of rights, on second reading.

Following is the article, as engrossed for second reading:

PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

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

ARTICLE I.

DECLARATION OF RIGHTS.

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

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

SEC. 3. The Constitution of the United States is the supreme law of the land.

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

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

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, or confined in any room where criminals are actually imprisoned.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and cases of misdemeanor, the jury may consist of any number less than twelve that the parties may agree upon in open Court.

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by indictment or by information, after commitment and examination by a Magistrate, as may be prescribed by law; but a Grand Jury shall be drawn and summoned at least once a year in each county.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found or information laid for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

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

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

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other causes, will not attend at the trial.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into Court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a Court of record, as shall be prescribed by law.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

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

SEC. 17. Foreigners of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

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

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

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

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

SEC. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 24. No property qualification shall ever be required for any person to vote or hold office.

MR. WYATT. Mr. President: If it is in order I will move that the reading of the bill of rights be suspended unless called for by somebody.

THE PRESIDENT. The gentleman can move to suspend the rules and dispense with the reading of the article by sections, and have the article read by its title.

MR. WYATT. I make that motion.

MR. VAN DYKE. A printed copy of the engrossed article is on the desk of each member.

The motion prevailed.

THE SECRETARY read:

"Preamble and bill of rights, as amended in Convention, and ordered engrossed for a second reading, January twenty-eighth, eighteen hundred and seventy-nine."

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MR. VAN DYKE. Mr. President: I offer an amendment to section three.

THE NATION.

THE SECRETARY read:

"Add to section: 'and the State of California is an inseparable part of the American Union.'"

MR. VAN DYKE. Mr. President: This Convention has been very severely criticized for its action in regard to this part of the bill of rights, and I think somewhat unjustly, but for the purpose of setting the members right—and I have no doubt that they will be glad of the opportunity—I offer this amendment. It will then read: "The Constitution of the United States is the supreme law of the land, and the State of California is an inseparable part of the American Union." I do not think there can be any objection to that, I think it will give the Convention an opportunity of placing itself right. It has been misunderstood by some of the press of the State.

MR. LARKIN. Is there any question about California being in the Union?

MR. VAN DYKE. No, sir.

MR. LARKIN. Then let us not raise it.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I was in hopes, after we had had this matter under advisement so long, and so much having been said against it, that this would prove to be entirely satisfactory. Herein we recognize the Constitution of the United States as the supreme law of the land. We may wish [confusion, hisses, and calls of "louder"]—gentlemen, I object. It is supposed there are no monkeys in this respectable audience. We may wish that there shall not be any sickness, we may wish that no plague of any description shall ever visit this country, we may ardently desire that there shall not be an insurrection here, but for us in this body assembled to make an assertion that such should not be, would simply be preposterous. It is understood that the members of this Convention ardently desire to perpetuate the American Union. They ardently wish never to see the dark clouds of war rise upon the American horizon. They would regret exceedingly that such should ever occur. Greatly, I am impressed, would every member of this body regret that any such calamity should attend posterity. But notwithstanding all this, we do not know what may transpire hereafter. We live not only in a land of sunshine and shadows, but we live in a world and in an age of convulsions, where mighty changes take place, and as to what changes may occur we cannot tell; and for us to take a position of this description, declaring that under no circumstances whatever could this be made separate—that under no circumstances whatever could this be a separate part of the Union—would be taking a position that if we were tyrannized upon, that if the iron heel of an oppressor should come down upon us, we would lose our human right; that we do not possess the rights of freemen, that we do not possess those natural rights found in the great Declaration of Independence. [Applause.] Now I am impressed with the truth of this remark, that there is more involved in what is presented before us than we may suppose. We do not wish to see a separation. We wish nothing of the kind, but how do we know that such shall never be in this world where men are but human—where men with power have become oppressors, where what has been may be again, and where things run in circles. We know that we have got oppression at Washington. We wish for reform and we hope never to see difficulties. Things are improving, but we do not know these facts which we assert. [Cries of "louder."] I will try and make you hear. You have to stamp to keep from hearing. You do not want to hear, and that is what is the matter with you. If you will listen, perhaps you will learn something in regard to American freedom. These are principles which concern our country. These are things which concern posterity, and we wish to see the tree of liberty rise still higher in its grandeur, and its lofty branches overspread the country; but we do not wish to bind down posterity by anything here that may, in the future, crush the heel of the giant upon posterity. We wish nothing of the kind. I think this amendment is entirely unnecessary. It embraces something which is not called for, and would have a tendency to bind future generations and make them swear to something which they could not support. I am in hopes that this body will sustain the report as it is before this house.

Messrs. West, Van Dyke, Campbell, Hunter, and Moreland demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Van Dyke, Schell, Brown, Freeman, and Stuart.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Davis,	Howard, of Mariposa,
Barbour,	Doyle,	Huestis,
Barry,	Eagon,	Inman,
Barton,	Estee,	Johnson,
Beerstecher,	Estey,	Jones,
Bell,	Evey,	Kenny,
Biggs,	Farrell,	Lampson,
Blackmer,	Filcher,	Larue,
Boucher,	Freeman,	Lavigne,
Burt,	Freud,	Lewis,
Campbell,	Gorman,	Lindow,
Caples,	Grace,	Martin, of Santa Cruz,
Casserly,	Hager,	McCallum,
Chapman,	Hale,	McComas,
Charles,	Harvey,	McConnell,
Condon,	Herold,	McNutt,
Cross,	Herrington,	Mills,
Crouch,	Hilborn,	Moffat,
Morse,	Smith, of 4th District,	Vacquerel,
Murphy,	Smith, of San Francisco,	Van Dyke,
Nason,	Soule,	Walker, of Marin,
Nelson,	Stedman,	Waters,
Ohleyer,	Stevenson,	Webster,
Prouty,	Stuart,	Weller,
Reynolds,	Sweasey,	Wellin,
Rhodes,	Thompson,	West,
Rolfe,	Tinnin,	Wickes,
Schell,	Townsend,	White,
Schomp,	Tully,	Wilson, of Tehama,
Shafter,	Turner,	Wilson, of 1st District,
Shurtleff,	Tuttle,	Mr. President—94.
Smith, of Santa Clara,		

NOES.

Andrews,	Hitchcock,	Porter,
Boggs,	Holmes,	Pulliam,
Brown,	Hunter,	Ringgold,
Garvey,	Kelley,	Swenson,
Glascock,	Moreland,	Swing,
Hall,	Noel,	Walker, of Tuolumne,
Heiskell,	O'Sullivan,	Wyatt—21.

MR. MARTIN, of Santa Cruz. I move the previous question on the entire article.

MR. VAN DYKE. I wish to correct a verbal mistake.

MR. MARTIN. The Revision Committee can do that.

MR. WATERS. I second the demand for the previous question.

Messrs. Larkin, Moffat, Townsend, and Freeman also demanded the previous question.

The main question was ordered.

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Ayers,	Harvey,	Ringgold,
Barbour,	Heiskell,	Rolfe,
Barry,	Herold,	Schell,
Barton,	Huestis,	Schomp,
Beerstecher,	Hunter,	Shafter,
Biggs,	Inman,	Shurtleff,
Blackmer,	Johnson,	Smith, of Santa Clara,
Boucher,	Kenny,	Smith, of 4th District,
Brown,	Kleine,	Smith, of San Francisco,
Burt,	Lampson,	Soule,
Campbell,	Larkin,	Stedman,
Casserly,	Larue,	Stevenson,
Chapman,	Lavigne,	Stuart,
Charles,	Lewis,	Swenson,
Condon,	Lindow,	Swing,
Cross,	Martin, of Santa Cruz,	Thompson,
Crouch,	McCallum,	Tinnin,
Davis,	McComas,	Townsend,
Doyle,	McConnell,	Tully,
Dunlap,	McNutt,	Turner,
Eagon,	Mills,	Tuttle,
Estee,	Moffat,	Vacquerel,
Estey,	Moreland,	Van Dyke,
Evey,	Morse,	Walker, of Marin,
Farrell,	Murphy,	Waters,
Filcher,	Nason,	Webster,
Freeman,	Nelson,	Weller,
Freud,	Neunaber,	Wellin,
Glascock,	Noel,	West,
Gorman,	Ohleyer,	White,
Grace,	O'Sullivan,	Wilson, of Tehama,
Hager,	Prouty,	Wyatt,
Hale,	Reynolds,	Mr. President—101.
Harrison,	Rhodes,	

NOES.

Andrews,	Herrington,	McFarland,
Bell,	Hilborn,	Porter,
Boggs,	Hitchcock,	Pulliam,
Caples,	Holmes,	Sweasey,
Dowling,	Howard, of Mariposa,	Wickes,
Garvey,	Jones,	Wilson, of 1st Dist—20.
Hall,	Kelley,	

THE PRESIDENT. The article is adopted as a part of the Constitution.

[Applause.]

MR. HAGER. Mr. President: I move that it be referred to the Committee on Revision and Adjustment.

THE PRESIDENT. It will be so ordered.

DEXECUTIVE EPARTMENT.

THE PRESIDENT. The next article is that on executive department. The following is the article, as engrossed for second reading:

ARTICLE V.

EXECUTIVE DEPARTMENT.

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

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

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

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

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

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

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

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

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

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

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

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

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 14. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tem. of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force in the State.

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner, as the Governor and Lieutenant-Governor, and whose term of office shall be the same as the Governor.

SEC. 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, shall each, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum; said compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; provided, however, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of said officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

SEC. 20. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

MR. BEERSTECHER. Mr. President: I move that the rule be suspended, and the article read by title.

The motion prevailed.

THE SECRETARY read:

"Executive department, as amended in Convention, and ordered engrossed for a second reading, January twenty-ninth, eighteen hundred and seventy-nine."

Messrs. Beerstecher, Stuart, Waters, Moffat, and Dean demanded the previous question, which was ordered by the Convention.

The roll was called, and the article was adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Harrison,	Reynolds,
Ayers,	Harvey,	Rhodes,
Barbour,	Heiskell,	Ringgold,
Barry,	Herold,	Rolfe,
Barton,	Herrington,	Schell,
Beerstecher,	Hitchcock,	Schomp,
Bell,	Holmes,	Shafter,
Biggs,	Huestis,	Shurtleff,
Blackmer,	Hunter,	Smith, of Santa Clara,
Boggs,	Inman,	Smith, of 4th District,
Boucher,	Johnson,	Smith, of San Francisco,
Brown,	Joyce,	Soule,
Burt,	Kenny,	Stedman,
Campbell,	Kleine,	Stevenson,
Chapman,	Lampson,	Stuart,
Charles,	Larkin,	Swenson,
Condon,	Larue,	Swing,
Cross,	Lavigne,	Thompson,
Crouch,	Lewis,	Tinnin,
Davis,	Lindow,	Townsend,
Dean,	Martin, of Santa Cruz,	Tully,
Dowling,	McCallum,	Tuttle,
Dunlap,	McComas,	Vacquerel,
Estee,	McConnell,	Van Dyke,
Estey,	McNutt,	Walker, of Marin,
Evey,	Mills,	Walker, of Tuolumne,
Farrell,	Moffat,	Waters,
Filcher,	Moreland,	Wellin,
Freeman,	Morse,	West,
Freud,	Murphy,	Wickes,
Garvey,	Nason,	White,
Glascock,	Nelson,	Wilson, of Tehama,
Gorman,	Neunaber,	Wilson, of 1st District,
Grace,	Noel,	Wyatt,
Hale,	Ohleyer,	Mr. President—107.
Hall,	Prouty,	

NOES.

Caples,	Kelly,	Pulliam,
Casserly,	McFarland,	Sweasey,
Eagon,	O'Sullivan,	Turner—11.
Jones,	Porter,	

MR. HAGER. [When his name was called.] Is it not necessary to read the articles at length?

THE PRESIDENT. That rule may be suspended. The Convention has suspended the rule.

The article, as adopted, was referred to the Committee on Revision and Adjustment.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

PETITION.

MR. CROSS presented a petition from merchants of Nevada City, in relation to "flying storekeepers."

Laid on the table.

RESOLUTION.

MR. VACQUEREL. I offer a resolution.

THE SECRETARY read:

"*Resolved*, That when this Convention adjourns to-morrow, it adjourn until Monday, the twenty-fourth, at two o'clock P. M."

THE PRESIDENT. Out of order.

NOTICE.

MR. TINNIN. I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention adopted the article on executive department.

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PARDONING POWER.

THE PRESIDENT. The next business in order is the consideration of the article on pardoning power on second reading. The Secretary will read.

MR. BEERSTECHER. Mr. President: I move that the rules be suspended and the article read by title.

MR. LARKIN. I ask that it be read by sections.

MR. TINNIN. I ask that it be read by sections.

MR. BEERSTECHER. I withdraw the motion.

THE SECRETARY read:

ARTICLE —.

SECTION 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

THE PRESIDENT. The question is upon the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Heiskell,	Schomp,
Ayers,	Hilborn,	Shafter,
Barry,	Hitchcock,	Shurtleff,
Barton,	Holmes,	Smith, of Santa Clara,
Biggs,	Howard, of Mariposa,	Smith, of 4th District,
Boggs,	Huestis,	Soule,
Boucher,	Johnson,	Stevenson,
Brown,	Jones,	Stewart,
Burt,	Kelley,	Sweasey,
Caples,	Lampson,	Swing,
Casserly,	Larkin,	Thompson,
Chapman,	Lindow,	Tinnin,
Charles,	Martin, of Santa Cruz,	Tully,
Cross,	McComas,	Turner,
Crouch,	McConnell,	Tuttle,
Davis,	McNutt,	Van Dyke,
Dean,	Murphy,	Walker, of Marin,
Dunlap,	Nason,	Walker, of Tuolumne,
Estee,	Nelson,	Waters,
Evey,	Neunaber,	Weller,
Filcher,	Noel,	West,
Freeman,	Ohleyer,	White,
Glascock,	Porter,	Wilson, of Tehama,
Gorman,	Rhodes,	Wilson, of 1st District,
Hager,	Ringgold,	Wyatt,
Harvey,	Rolfe,	Mr. President—78.

NOES.

Barbour,	Harrison,	Smith, of San Francisco,
Beerstecher,	Herold,	Stedman,
Bell,	Hunter,	Townsend,
Condon,	Joyce,	Vacquerel,
Dowling,	Kenny,	Webster,
Doyle,	McCallum,	Wellin,
Freud,	McFarland,	Wickes—23.
Hall,	O'Sullivan,	

Referred to the Committee on Revision and Adjustment.

MILITIA.

THE PRESIDENT. The next business in order is the consideration of the article on military, on second reading. The Secretary will read.

THE SECRETARY read:

ARTICLE —.

MILITIA.

SECTION 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as they may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

SEC. 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

THE PRESIDENT. The question is on the adoption of the article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article was adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Hilborn,	Pulliam,
Ayers,	Hitchcock,	Reynolds,
Barbour,	Holmes,	Ringgold,
Barry,	Howard, of Mariposa,	Rolfe,
Barton,	Huestis,	Schomp,
Beerstecher,	Hughey,	Shafter,
Bell,	Hunter,	Shurtleff,
Biggs,	Inman,	Smith, of Santa Clara,
Boggs,	Jones,	Smith, of 4th District,
Boucher,	Joyce,	Smith, of San Francisco,
Brown,	Kenny,	Soule,
Burt,	Lampson,	Stedman,
Campbell,	Larkin,	Stevenson,
Caples,	Larue,	Stuart,
Casserly,	Lavigne,	Sweasey,
Chapman,	Lewis,	Swenson,
Charles,	Lindow,	Swing,
Condon,	Martin, of Santa Cruz,	Thompson,
Cross,	McCallum,	Townsend,
Crouch,	McComas,	Tully,
Davis,	McConnell,	Turner,
Dean,	McFarland,	Tuttle,
Dunlap,	McNutt,	Vacquerel,
Estee,	Mills,	Van Dyke,
Estey,	Moreland,	Walker, of Marin,
Evey,	Morse,	Waters,
Filcher,	Murphy,	Webster,
Freeman,	Nason,	Weller,
Freud,	Nelson,	West,
Glascock,	Neunaber,	Wickes,
Gorman,	Noel,	White,
Hager,	Ohleyer,	Wilson, of Tehama,
Hall,	O'Sullivan,	Wilson, of First District,
Harrison,	Porter,	Wyatt,
Harvey,	Prouty,	Mr. President—106.
Herold,		

NOES.

Heiskell,	Tinnin,	Wellin—5.
Kelley,	Walker, of Tuolumne,	

Referred to the Committee on Revision and Adjustment.

RELATIVE TO CHINESE.

THE PRESIDENT. The next business in order is the consideration of the article relative to Chinese, on second reading. The Secretary will read.

THE SECRETARY read:

ARTICLE —.

CHINESE.

SECTION 1. The Legislature shall prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; provided, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SEC. 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crimes.

SEC. 4. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution.

SEC. 5. No aliens ineligible to become citizens of the United States shall be permitted to catch fish in any waters under the jurisdiction of this State; nor to purchase, lease, own, or hold any real property in this State, and all contracts of conveyance or lease of real property to any such aliens shall be void.

SEC. 6. The presence of foreigners ineligible to become citizens of the United States is declared herein to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism, being a form of human slavery, is forever prohibited in this State, and all contracts for coolie labor are null and void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or their location within prescribed portions of those limits; and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

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THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution.

MR. INMAN. Mr. President: I move to strike out section four. It is a contradiction of terms. It is in direct conflict with the laws of the United States and the treaty-making power.

MR. AYERS. Mr. President: I hope the section will not be stricken out. It has been thoroughly discussed, and the Convention has decided to retain it, and I do not think it ought to be altered at this late day.

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

Ayes and noes by Messrs. Condon, Brown, Caples, and Webster.

MR. CAPLES. Mr. President: I am and have been a consistent enemy of Chinese immigration. I have been for twenty-seven years denouncing this curse, and I am ready to go as far as any other gentleman here within the limits of the power we have. But I do not propose to sustain a proposition that is in direct conflict with Federal authority. I recognize the fact that the Constitution of the United States, and the treaties made in pursuance thereof, are the supreme law of the land, and for that reason I shall vote to strike it out.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. President: I shall not detain the Convention a moment. I most sincerely hope that nothing that is contained in this article will be removed by the Convention at this late day. The most radical features of this article have already been removed. It is possible that the bill now before the President may not be signed. If it should be signed, it is possible that it may be repealed at some future day. There is nothing in this that I can see that is in conflict with the Constitution of the United States; if so, I should not vote for it. I hope that this whole article will pass as it has passed on previous occasions; it is too late now to change it.

MR. STUART. Mr. President: I am opposed to this whole article, and I hope it will be stricken out.

MR. CASSERLY. Mr. President: I should be glad to vote for this whole article, but I have, on two or three occasions, taken an oath to support the Constitution of the United States, and there are some of these sections I cannot vote for.

MR. SHAFTER. Mr. President; I wish to express my dissent from the doctrines here. The first section I have no particular objections to, because it applies to all alike, but as to the others, they are in conflict with Federal laws and the Federal Constitution. I have taken an oath, over and over again, to support that Constitution, and I am not going to violate it.

MR. BARBOUR. Then does not the bill now before Congress violate the treaty and the Constitution?

MR. SHAFTER. No, sir; for the reason that the Government has always the right of self-protection; but the State has no such authority, because she is bound by the authority of the United States. I am opposed to it; and no Constitution in violation of Federal authority shall ever receive my sanction. It has been thrust into the Convention to put those who were in favor of doing anything they legitimately could to remedy the Chinese evil, into a false position, and then charging them with being in favor of fostering Chinese immigration.

THE PREVIOUS QUESTION.

MR. LARKIN. Mr. President: I think this question has been fully discussed before, and I move the previous question on the article.

THE PRESIDENT. You cannot, because there is an amendment pending.

MR. LARKIN. Then I move the previous question on the amendment.

Seconded by Messrs. Condon, Joyce, Holmes, and Larue.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried, by a vote of 70 ayes to 20 noes.

THE PRESIDENT. The question is on the motion to strike out section four. The Secretary will call the roll.

The roll was called, and the section was stricken out by the following vote:

AYES.

Boggs,	Hitchcock,	Porter,
Boucher,	Howard, of Mariposa,	Prouty,
Brown,	Huestis,	Pulliam,
Burt,	Inman,	Rhodes,
Campbell,	Johnson,	Rolfe,
Caples,	Jones,	Schomp,
Casserly,	Lampson,	Shafter,
Chapman,	Larue,	Shurtleff,
Charles,	Lewis,	Soule,
Crouch,	Martin, of Santa Cruz,	Stuart,
Dunlap,	McCallum,	Thompson,
Eagon,	McComas,	Townsend,
Estee,	McConnell,	Turner,
Estey,	McFarland,	Van Dyke,
Filcher,	McNutt,	Van Voorhies,
Glascock,	Mills,	Walker, of Tuolumne,
Hager,	Moreland,	Webster,
Hale,	Nason,	Weller,
Hall,	Noel,	Wilson, of 1st District,
Harvey,	Ohleyer,	Mr. President—61.
Hilborn,		

NOES.

Andrews,	Beerstecher,	Dean,
Ayers,	Bell,	Dowling,
Barbour,	Biggs,	Doyle,
Barry,	Condon,	Evey,
Barton,	Davis,	Freeman,
Freud,	Lindow,	Sweasey,
Gorman,	Moffat,	Swenson,
Grace,	Morse,	Swing,
Harrison,	Murphy,	Tinnin,
Heiskell,	Nelson,	Tully,
Herold,	Neunaber,	Tuttle,
Holmes,	O'Sullivan,	Vacquerel,
Hughey,	Reynolds,	Walker, of Marin,
Hunter,	Ringgold,	Waters,
Joyce,	Shoemaker,	Wellin,
Kelley,	Smith, of Santa Clara,	West,
Kenny,	Smith, of 4th District,	Wickes,
Kleine,	Smith, of San Francisco,	White,
Larkin,	Stedman,	Wilson, of Tehama,
Lavigne,	Stevenson,	Wyatt—60.

MR. ESTEE. Mr. President: I move to strike out section five.

THE PRESIDENT. The question is on the motion to strike out section five.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: Section five reads: "No aliens ineligible to become citizens of the United States shall be permitted to catch fish in any waters under the jurisdiction of this State; nor to purchase, lease, own, or hold any real property in this State," etc. Mr. President, that means, first, that those Chinamen who are here now shall not be permitted to pursue an ordinary calling by which they may earn a living; and, second, that they are not to be permitted to hold real estate. In other words, no Chinaman in this State can rent a house or a room to live in. Everybody knows that such a provision could not be enforced; that the Chinese who are here must live; that they must sleep somewhere. If not allowed to support themselves, the people would have to do it. If they live in any of the towns, they must have houses to sleep in; they cannot sleep in the fields. That section seems to me to be utterly heartless. It would be a disgrace to our State to pass it. The Chinese came here under treaty stipulations, and under the law of nations; the adoption of such a section, so grossly in violation of the terms of the treaty, would be considered a just cause for war, if any effect were given to it. It is contrary to the most enlightened spirit of the age, and would be a disgrace to our boasted American civilization. And, sir, for one, I utterly reject the idea that a section of that kind would meet or remedy the evil we labor under. It would turn all civilized people against us everywhere. It would show to the world that we are below these very people we would proscribe, in point of civilization; these people whom we call heathens. If we cannot control our own prejudices and feelings enough to act in a civilized manner, we are incapable of making a Constitution. I am as anxious to get rid of the Chinese as any man in the State of California, but I will not vote to deprive them of the means of procuring the necessaries of life, or add to the great wrong inflicted upon us by being ourselves in the wrong. Besides this, it will injure the very cause we are trying to promote. It would have a marked effect on public sentiment in the East. Imagine a Senator or Representative in Congress, when the question of Chinese immigration is under debate, getting up and reading section five now under consideration. I want to know what Senator or Representative would not denounce it as being opposed to the spirit of our civilization. It would array against us a prejudice that we are not entitled to have arrayed against us, and that we should seek to avoid. I appreciate what the gentleman from San Francisco has said. I, too, have taken an oath to support the Constitution of the United States; and I do not believe there is a lawyer on this floor, who has given this subject thoughtful consideration, but is satisfied that section five is unconstitutional. It is contrary to the Constitution and laws of the United States. Therefore I earnestly appeal to the members of this Convention to strike out this section. Section four was nothing compared to this. This section says in effect that the Chinese shall not lease real estate; that they shall not own real estate; that they shall not live in a house; and any contract whereby they are permitted to do so shall be void. This would be futile if adopted, for it could not be enforced, and no rational man can, for one moment, believe it ought to be enforced.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: I am willing to go as far as any one to suppress Chinese immigration, but I do not think this section will effect that purpose. It will be in contravention of the law and the treaty. I do not care to put myself on record as favoring a proposition which I believe will be in contravention of a solemn treaty. That treaty guarantees to that nation certain rights. Now, I do not want to occupy time discussing this matter, but I shall move to amend by offering a substitute for section five, to the effect that "after the year eighteen hundred and eighty, no resident foreigner ineligible to become a citizen of the United States shall hold, own, or inherit property, nor do business, nor engage in any occupation or employment in this State unless he shall first become registered, and take out a special license therefor, and pay into the State treasury annually the sum of five hundred dollars, the money to be used as a fund to depart such foreigners who may be convicted of crime," etc. That applies to all classes of foreigners who are ineligible to become citizens. It also gives them sufficient notice.

MR. STUART. Will that apply to any but Chinese in fact.

MR. HAGER. I think there are some others.

MR. ESTEE. What are you going to do with those who cannot raise five hundred dollars?

MR. HAGER. There will be plenty of time for them to get out of the country. Leave it to the Legislature to enforce.

MR. AYERS. Mr. President: I regret to see this methodical combined attack upon this article. There seems to be a disposition to undo everything which we have done on this subject. The whole object of

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this article is to rid ourselves of an objectionable population. If it is the intention of gentlemen to break down this article they have gone the right way to do it. I say to gentlemen who have heretofore stood right upon this question, stand to your guns.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I hope, sir, that this Convention will act under the influence of reason and not of passion, and that we will not adopt a section that will shock the humane sentiment of the entire civilized world; that we will consider what effect this will have upon the very cause which these gentlemen profess to have so much at heart. What will be the effect of such a provision as that upon Congress. The very first thing they will do will be to authorize the Chinese to become citizens. They will do it for their protection, and they will be backed by the sentiment of the entire Union outside of this coast. That would be a terrible and fearful result. But it is a result that is just as certain to follow as that the sun will set to-day and rise to-morrow. I warn gentlemen that they will defeat the very purpose they have in view by the adoption of these extreme measures. It is policy, and it is our duty to conciliate our brothers at the East. The Chinese question as it exists upon this coast is understood by very few persons there. We are beginning to make an impression upon the public mind there, and if we adopt any such monstrous propositions as these we will undo all that has been done, and turn the whole tide of public sympathy against us.

MR. WEST. Mr. President: I have consistently voted for most of these sections, but I cannot support section five. I voted for section four; I am sorry it has been stricken out. But section five goes too far. It will injure the very interest which we are so anxious to serve. I shall therefore vote to strike it out.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. President: I ask the Workingmen to consider what effect this will have on the people of the other side of the continent—upon both houses of Congress. Why, any gentleman who has perused the public papers, must know that it is just as much as we can do to stem the current of public opinion there, and now we propose to furnish our enemies with a club with which to beat our brains out. That is just exactly what we are doing. It is a good thing sometimes to go a little slow, and this is one of the times. I appeal to this Contion not to strike such a deadly blow, as this is sure to be, at the best interests of this State.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I do not think this section will have any such effect as gentlemen seem to think. The proposition which has been stricken out was copied from the Constitutions of Indiana and Illinois. It was there applied to the negro. The Supreme Court affirmed the right of the State to forbid that class of persons from settling there. So far as the treaty is concerned, that has reference to commerce, and it never has been claimed that it has any reference to settlement in this country. I remember very early in the session, the gentleman from San Francisco, Mr. Estee, said we had a right to meet these people at the Golden Gate and prevent them from landing. Now he says we have no such right. It is very strange how men will change. Now, I was opposed to striking out section four, and I am opposed to striking out section five.

REMARKS OF MR. VAN VOORHIES.

MR. VAN VOORHIES. Mr. President: I have not occupied much of the time of this Convention, nor do I propose to, but it seems remarkable to me that any man can oppose striking out this section. My idea is that the entire article ought to be stricken out, or at least all except the first section. The other sections in this article are simply vicious—villainous. The gentleman from Los Angeles says we must stand by our guns. Does he mean to tell us that we must stand by our guns, even though the sound of those guns involves us in a war with China? I ask if there are any civilized nations on the face of the earth who would adopt any such monstrous measures as this to drive them out? We propose to say that they shall not fish in the waters of the State. We propose to starve them out; that they shall not have houses to live in. Let us do away with all this kind of talk. Let us say to Congress that the Chinese must not come here in the way they have done, and let Congress—as Congress has done, or is doing—find the remedy and apply it. We propose, through Congress, to say to these people, you shall not bring more than fifteen Chinamen. We will take your silks, we will take your teas, your rice, your opium, your whisky—I don't know whether they make any or not [laughter]—but we don't want your people. "No alien"—that means a Chinaman; of course it don't mean an Irishman [laughter]—"shall catch fish." Well, what shall he catch? Do you mean that the Chinese shall not be permitted to live here?

MR. GRACE. That is what we mean.

MR. VAN VOORHIES. We have one hundred and fifty thousand of them on this coast, all of whom came here by our invitation and solicitation. Do you pretend to say that this one hundred and fifty thousand Chinamen must die? For the same spirit that will prevent them from eating fish, will prevent them from eating any other food. Is that what you mean? Do you intend to send a message to President Hayes and say, the Constitutional Convention has issued the edict: The Chinese must die? [Laughter.] They shall not live, we intend to kill them. I trust, sir, we shall do no such foolish thing as to set this State up as superior to the nation. [Applause.]

REMARKS OF MR. BARRY.

MR. BARRY. Mr. President: I shall vote to retain section five, for the same reason that I voted to retain section four, that I believe they come within the powers of this State, and are not in conflict with the powers of the United States. We are now threatened with a gigantic evil; we are threatened by revolution in our State. It is threatening the peace of the world and the welfare of our State. To strike out these sections now will be to proclaim that the State is powerless to protect herself from this great and overshadowing evil. If the President should fail to sign the bill now before him, then we will have no redress. All our powers for self-protection are at an end, and I shall vote to retain this, as I said before, because it is necessary for the welfare of the State. I believe, sir, without it we have nothing left. I believe it would have a bad effect upon Congress and upon the President, if we should strike this out. If we leave it in they will see that we are in earnest, and our demands will be more apt to be respected.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I was never aware exactly how the members of the committee stood on these questions. Mr. Wilson, of San Francisco, was on the committee; I don't know whether he has stood by his guns or not. Mr. Van Voorhies was on the committee, and whether he stood by his guns or not I do not know. He did write a memorial, but on this particular section I do not know how he stood. Now, sir, a very extraordinary thing presents itself here. Generally the previous question is sprung, but here there seems to be a disposition not to have the previous question, but to carry this article down, section after section, with a rush. We are appealed to not to disfigure the Constitution by such an inhuman thing. We are called upon not to discourage our friends at Washington, not to cause a revulsion of Eastern sentiment. Now, sir, instead of discouraging our friends, instead of setting the East against us, the contrary effect has been produced by the uprising of the Workingmen of California, and the adoption of this very section. Now, sir, I think we have convinced the people of the East that we are in earnest. Do gentlemen pretend here that they are ignorant about it? No, sir. This thing was published there three weeks ago, for there was a cut on the title page of Harper's Weekly, and Congress knew all about it, and yet the anti-Chinese bill went through all the same, where it never had a ghost of a chance before. Why are you preventing us from using whatever power the State has? We will cut a most comical figure in the eyes of the world when we are afraid to take the bull by the horns ourselves. Why, we should deserve the scorn of our own people and everybody else. Now, the State undoubtedly has this power over its waters, and ought to exercise it. There is no attempt in this section to starve them out. The next Presidential election is uncertain; the result hangs upon California, Nevada, and Oregon. We have no hope except in our own resources, and we must use them to the best advantage, and we must have these things retained in the Constitution, ready for use when other things fail, and other things are liable to fail. I do not propose to starve them out, but I propose to work them off, and circumscribe their employment. Is there anything wrong in that? Can you, or any fair minded man, say that we are inhuman because we refuse to open the avenues of employment to them? I dare you to go and do it. [Applause.] That is all we propose to do. Now, let us do something effectual here, let us answer the demands of the people. Let us show the people of the East that we are in earnest and that we mean to do something, and they will respect us and aid us.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Hunter, Holmes, Brown, and Dean.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried, by a vote of 55 ayes to 52 noes.

THE PRESIDENT. The question is on the motion to strike out section five.

The ayes and noes were demanded by Messrs. Beerstecher, Harrison, Condon, Joyce, and McCallum.

The roll was called, and the motion to strike out prevailed by the following vote:

AYES.

Biggs,	Hilborn,	Rhodes,
Boggs,	Hitchcock,	Rolfe,
Boucher,	Howard, of Mariposa,	Schomp,
Burt,	Huestis,	Shafter,
Campbell,	Inman,	Shurtleff,
Caples,	Johnson,	Smith, of Santa Clara,
Casserly,	Jones,	Stevenson,
Chapman,	Lampson,	Stuart,
Charles,	Lewis,	Sweasey,
Crouch,	Martin, of Santa Cruz,	Thompson,
Dunlap,	McCallum,	Tinnin,
Eagon,	McComas,	Townsend,
Estee,	McConnell,	Turner,
Estey,	McFarland,	Van Dyke,
Filcher,	McNutt,	Van Voorhies,
Garvey,	Mills,	Walker, of Tuolumne,
Glascock,	Nason,	Webster,
Hager,	Noel,	Weller,
Hale,	Ohleyer,	West,
Hall,	Porter,	Wilson, of 1st District,
Harvey,	Prouty,	Mr. President—64.
Heiskell,		

NOES.

Andrews,	Bell,	Doyle,
Ayers,	Brown,	Evey,
Barbour,	Condon,	Freeman,
Barry,	Davis,	Freud,
Barton,	Dean,	Gorman,
Beerstecher,	Dowling,	Grace,

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Harrison,	McCoy,	Stedman,
Herold,	Moffat.	Swenson,
Herrington,	Moreland,	Tully,
Holmes,	Morse,	Tuttle,
Hughey,	Murphy,	Vacquerel,
Hunter,	Nelson,	Walker, of Marin,
Joyce,	Neunaber,	Waters,
Kelley,	O'Sullivan,	Wellin,
Kenny,	Reynolds,	Wickes,
Kleine,	Ringgold,	White,
Larkin,	Smith, of 4th District,	Wilson, of Tehama,
Lavigne,	Smith, of San Francisco,	Wyatt—56.
Lindow,	Soule,	

PAIRED—Mr. Larue, aye, with Mr. Shoemaker, no.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Brown, Harrison, Tully, and Dean.

THE PRESIDENT. The question is: Shall the main question be now put upon the entire article?

Carried.

THE PRESIDENT. The question is upon the adoption of the article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article, as amended, was adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Hilborn,	Reynolds,
Ayers,	Hitchcock,	Rhodes,
Barbour,	Holmes,	Ringgold,
Barry,	Howard, of Mariposa,	Rolfe,
Barton,	Huestis,	Schomp,
Beerstecher,	Hughey,	Shafter,
Bell,	Hunter,	Shurtleff,
Biggs,	Inman,	Smith, of Santa Clara,
Brown,	Johnson,	Smith, of 4th District,
Burt,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Casserly,	Kenny,	Stedman,
Chapman,	Kleine,	Stevenson,
Charles,	Lampson,	Sweasey,
Condon,	Larkin,	Swenson,
Davis,	Larue,	Thompson,
Dean,	Lavigne,	Tinnin,
Dowling,	Lewis,	Townsend,
Doyle,	Lindow,	Tully,
Dunlap,	Martin, of Santa Cruz,	Tuttle,
Estee,	McCallum,	Vacquerel,
Evey,	McComas,	Van Dyke,
Filcher,	McConnell,	Walker, of Marin,
Freeman,	McCoy,	Walker, of Tuolumne,
Freud,	McNutt,	Waters,
Garvey,	Moffat,	Webster,
Gorman,	Moreland,	Wellin,
Grace,	Morse,	West,
Hager,	Murphy,	Wickes,
Hale,	Nason,	White,
Harrison,	Nelson,	Wilson, of Tehama,
Harvey,	Neunaber,	Wilson, of 1st District,
Heiskell,	Ohleyer,	Wyatt,
Herold,	O'Sullivan,	Mr. President—104.
Herrington,	Prouty,	

NOES.

Boggs,	Glascock,	Porter,
Boucher,	Hall,	Stuart,
Campbell,	Jones,	Turner,
Crouch,	McFarland,	Van Voorhies,
Eagon,	Mills,	Weller—17.
Estey,	Noel,	

Referred to the Committee on Revision and Adjustment.

NOTICE.

MR. CASSERLY. I hereby give notice that, on to-morrow, the twenty-first instant, I will move to reconsider the vote by which the preamble and bill of rights was finally passed.

CORPORATIONS OTHER THAN MUNICIPAL.

THE PRESIDENT. The next business in order is the consideration of the article on corporations other than municipal, on second reading.

MR. INMAN. Mr. President: I move that the reading be dispensed with.

MR. TINNIN. I hope it will not be dispensed with. The idea of forcing through without reading the organic law of a State, is something unheard of. We have compelled the Legislature to read their bills at length, and I hope we will not stultify ourselves in any such manner.

MR. INMAN. I withdraw my motion.

THE SECRETARY read the article as follows:

ARTICLE —.

CORPORATIONS.

SECTION 1. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation, or association. The Directors or Trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such Director or Trustee.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and be subject to be sued, in all Courts, in like cases as natural persons.

SEC. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws; but no corporation, association, or individual shall make, issue, or put in circulation, as money, anything but the lawful money of the United States.

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 7. The Legislature shall not extend any franchise or charter, or remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

SEC. 9. No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business.

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting called for that purpose, first giving sixty days public notice, as may be provided by law.

SEC. 12. In all elections for Directors or Managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him for as many persons as there are Directors or Managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such Directors or Managers shall not be elected in any other manner, except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

SEC. 13. The State shall not subscribe to, or be interested in, the stock of, or in any manner loan its credit to, any person, company, association, or corporation.

SEC. 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SEC. 15. No corporation, organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

SEC. 16. A corporation or association may be sued at the county where the contract is made or is to be performed, or where the obligation or liability arises, or breach occurs; or at the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

SEC. 17. All railroad, canal, and other transportation companies shall be common carriers, and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive

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and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SEC. 18. No President, Director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature, or any public officer, other than Railroad Commissioners, shall work a forfeiture of his office.

SEC. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority, in which shall be vested the power to regulate fares and freights, authorizing such change.

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

SEC. 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors of their respective districts at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpœnas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars or be imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever for any cause a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

SEC. 23. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

SEC. 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

MR. JONES. I offer an amendment to section three.

THE SECRETARY read:

"Add to section three: 'unless such Director or Trustee shall show that such embezzlement or misappropriation happened without any fault or neglect on his part, and that he used the utmost diligence to prevent the same.'"

MR. JONES. Mr. President: I have supported the general doctrine of making Directors responsible, but I cannot say that it has ever met my judgment or my conscience that any officer should be held responsible, in which he himself was not concerned, and which was not the result of any negligence on his part, and in regard to which he can show that he did all in his power to prevent the act.

THE PREVIOUS QUESTION.

MR. BEERSTECHER. Mr. President: Knowing that this same amendment has been offered and rejected six or seven times in its different forms, and that the whole matter has been thoroughly discussed before, I now move the previous question.

Seconded by Messrs. Barton, Stedman, Wyatt, and White.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The previous question applies to the section and amendment only. The question is on the adoption of the amendment.

The ayes and noes were demanded by Messrs. Joyce, Condon, Kenny, Larkin, and White.

The roll was called, and the amendment rejected by the following vote:

AYES.

Biggs,	Inman,	Shurtleff,
Boggs,	Johnson,	Smith, of Santa Clara,
Boucher,	Jones,	Stevenson,
Burt,	Lampson,	Stuart,
Campbell,	Lewis,	Thompson,
Casserly,	McConnell,	Townsend,
Crouch,	McFarland,	Turner,
Estee,	Mills,	Van Dyke,
Hager,	Murphy,	Van Voorhies,
Hall,	Noel,	Walker, of Tuolumne,
Harvey,	Porter,	Webster,
Hilborn,	Rhodes,	Weller,
Hitchcock,	Rolfe,	Wilson, of 1st District,
Howard, of Mariposa,	Schomp,	Mr. President—44.
Huestis,	Shafter,	

NOES.

Andrews,	Heiskell,	Nelson,
Ayers,	Herold,	Neunaber,
Barbour,	Herrington,	Ohleyer,
Barry,	Holmes,	O'Sullivan,
Barton,	Hughey,	Reynolds,
Beerstecher,	Hunter,	Ringgold,
Bell,	Joyce,	Smith, of San Francisco,
Brown,	Kelley,	Soule,
Charles,	Kenny,	Stedman,
Condon,	Kleine,	Sweasey,
Davis,	Larkin,	Swenson,
Dean,	Larue,	Tinnin,
Dowling,	Lavigne,	Tully,
Doyle,	Lindow,	Tuttle,
Dunlap,	Martin, of Santa Cruz,	Vacquerel,
Estey,	McCallum,	Walker, of Marin,
Evey,	McComas,	Waters,
Filcher,	McCoy,	Wellin,
Freeman,	McNutt,	West,
Freud,	Moffat,	Wickes,
Glascock,	Moreland,	White,
Gorman,	Morse,	Wilson, of Tehama,
Grace,	Nason,	Wyatt—70.
Harrison,		

THE PREVIOUS QUESTION.

MR. LARKIN. Mr. President: I move the previous question on the article.

Seconded by Messrs. Tully, Condon, Doyle, and Brown.

THE PRESIDENT. The question is: Shall the main question be now put?

Upon which the ayes and noes were demanded by Messrs. Burt, Shurtleff, Huestis, and Larkin.

The roll was called, and the Convention ordered the main question to be put by the following vote:

AYES.

Andrews,	Beerstecher,	Dean,
Ayers,	Bell,	Dowling,
Barbour,	Brown,	Doyle,
Barry,	Condon,	Dunlap,
Barton,	Davis,	Estey,

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Evey,	Lindow,	Sweasey,
Freeman,	McConnell,	Swenson,
Freud,	McCoy,	Tinnin,
Gorman,	McFarland,	Tully,
Grace,	Moffat,	Tuttle,
Harrison,	Morse,	Walker, of Marin,
Heiskell,	Murphy,	Waters,
Herold,	Nelson,	Wellin,
Herrington,	Neunaber,	West,
Hunter,	O'Sullivan,	Wickes,
Joyce,	Reynolds,	White,
Kenny,	Ringgold,	Wilson, of Tehama,
Kleine,	Smith, of San Francisco,	Wyatt,
Larkin,	Soule,	Mr. President—58.
Lavigne,		

NOES.

Biggs,	Huestis,	Rhodes,
Boggs,	Inman,	Rolfe,
Boucher,	Johnson,	Schomp,
Burt,	Jones,	Shafter,
Campbell,	Kelley,	Shurtleff,
Caples,	Lampson,	Smith, of Santa Clara,
Chapman,	Larue,	Stedman,
Charles,	Lewis,	Stevenson,
Crouch,	Martin, of Santa Cruz,	Stuart,
Estee,	McCallum,	Thompson,
Filcher,	McComas,	Townsend,
Glascock,	McNutt,	Turner,
Hager,	Mills,	Vacquerel,
Hall,	Moreland,	Van Dyke,
Harvey,	Nason,	Van Voorhies,
Hilborn,	Noel,	Walker, of Tuolumne,
Hitchcock,	Ohleyer,	Webster,
Holmes,	Porter,	Weller,
Howard, of Mariposa,	Prouty,	Wilson, of 1st Dist.—57.

PAIRED.—Mr. Cross, aye, with Mr. Casserly, no.

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Herold,	Reynolds,
Ayers,	Herrington,	Rhodes,
Barbour,	Holmes,	Ringgold,
Barry,	Huestis,	Rolfe,
Barton,	Hunter,	Smith, of Santa Clara,
Beerstecher,	Inman,	Smith, of San Francisco,
Bell,	Joyce,	Soule,
Brown,	Kenny,	Stedman,
Burt,	Kleine,	Stevenson,
Campbell,	Larkin,	Sweasey,
Caples,	Larue,	Swenson,
Condon,	Lavigne,	Thompson,
Davis,	Lindow,	Tinnin,
Dean,	McCallum,	Tully,
Dowling,	McComas,	Tuttle,
Doyle,	McConnell,	Van Dyke,
Dunlap,	McCoy,	Van Voorhies,
Estee,	McNutt,	Walker, of Marin,
Estey,	Moffat,	Walker, of Tuolumne,
Evey,	Moreland,	Webster,
Filcher,	Morse,	Wellin,
Freeman,	Nason,	West,
Freud,	Nelson,	Wickes,
Glascock,	Neunaber,	White,
Gorman,	Noel,	Wilson, of Tehama,
Grace,	Ohleyer,	Wyatt,
Harrison,	O'Sullivan,	Mr. President—83.
Heiskell,	Prouty,	

NOES.

Biggs,	Hitchcock,	Porter,
Boggs,	Howard, of Mariposa,	Schomp,
Boucher,	Johnson,	Shafter,
Chapman,	Jones,	Shurtleff,
Charles,	Kelley,	Stuart,
Crouch,	Lampson,	Townsend,
Eagon,	Lewis,	Turner,
Hager,	Martin, of Santa Cruz,	Vacquerel,
Hall,	McFarland,	Waters,
Harvey,	Mills,	Weller,
Hilborn,	Murphy,	Wilson, of 1st Dist.—33.

Referred to the Committee on Revision and Adjustment.

NOTICES.

MR. WILSON, of First District. Mr. President: I respectfully give notice that I will, on to-morrow, move the Convention to reconsider the vote by which the article on Chinese was finally passed.

MR. MORELAND. Mr. President: I hereby give notice that I will, on to-morrow, move to reconsider the vote whereby the article on Chinese was adopted; also to reconsider the vote by which section four thereof was stricken out.

MR. TULLY. I move we do now adjourn.

Lost.

LEGISLATIVE DEPARTMENT.

THE PRESIDENT. The next business in order is the consideration of the article on legislative department on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —.

LEGISLATIVE DEPARTMENT.

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

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence at twelve o'clock M., on the first Monday after the first Tuesday in January next ensuing the election of its members, unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except the first session called after the adoption of this Constitution, which may be allowed pay for one hundred days. And no bill shall be introduced, in either House, after the expiration of ninety days from the commencement of the first session, and of fifty days after the commencement of each succeeding session, without the consent of two thirds of the members of said House.

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

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two, from the odd numbered districts, shall be vacated at the expiration of the second year, so that one half of the Senators shall be elected every two years; provided, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years.

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty Senatorial and eighty Assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Senatorial and Assembly districts. Each Senatorial district shall choose one Senator, and each Assembly district shall choose one member of Assembly. The Senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the Assembly districts shall be numbered from one to eighty in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of said districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

SEC. 7. Each House shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SEC. 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

SEC. 9. Each House shall determine the rule of its own proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member.

SEC. 10. Each House shall keep a Journal of its own proceedings, and publish the same, and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.

SEC. 11. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 12. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting. Nor shall any members of either House draw pay for any recess or adjournment for a longer time than three days.

SEC. 15. No law shall be passed except by bill; nor shall any bill be

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put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House, unless, in case of urgency, two thirds of the House where such bill may be pending, shall, by a vote of yeas and nays, deem it expedient to dispense with this provision. Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House.

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, two thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it has been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted,) shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

SEC. 19. No Senator, or member of the Assembly, shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which have been increased during such term, except such offices as may be filled by election by the people.

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; provided that officers in the militia, to which there is attached no annual salary, or local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

SEC. 21. No person convicted of the embezzlement or defalcation of the public funds of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of such embezzlement or defalcation as a felony.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State, as a State institution, nor shall any grant or donation of property ever be made thereto by the State; provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged, or sick, or disabled persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; provided, further that the State shall have, at any time, the right to inquire into the management of such institutions; provided, further, that whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town, shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 23. The members of the Legislature shall receive for their services a compensation, per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either House shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed.

SEC. 24. Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal cases.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual, any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market, under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 27. When a Congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a Congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many Congressional districts as it may be entitled to by law.

SEC. 28. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

SEC. 30. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church,

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or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

SEC. 31. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph, gas, and water corporations, and the charges by corporations or individuals for storage, wharfage, and water, in which there is a public use, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

SEC. 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

SEC. 35. Any person who seeks to influence the vote of any member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, proven to have been influenced in his vote or action upon any matter pending before the Legislature, by any reward, or promise of future reward, shall be guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office of public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

ADJOURNMENT.

MR. WYATT. I move we do now adjourn.

Carried.

And, at five o'clock and fifteen minutes P. M. the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND FORTY-SEVENTH DAY.

SACRAMENTO, Friday, February 21st, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Finney,	O'Donnell,
Berry,	Graves,	Overton,
Blackmer,	Gregg,	Pulliam,
Boggs,	Howard, of Los Angeles,	Reddy,
Cowden,	Keyes,	Shoemaker,
Dudley, of San Joaquin,	Laine,	Steele,
Dudley, of Solano,	Martin, of Alameda,	Terry,
Farrell,	Murphy,	Winans.
Fawcett,		

THE JOURNAL.

MR. LINDOW. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITION.

MR. PROUTY presented a petition from Amador County, asking exemption of certain property from taxation.

Laid on the table.

RECONSIDERATION—CHINESE.

MR. WILSON, of First District. Mr. President: I move, in accordance with notice, to reconsider the vote by which the article on Chinese was adopted yesterday. I would say, in reference to that, Mr. President, that we yesterday proceeded with a very considerable amount of haste in the adoption of some of these articles. Section four—and section five, after some discussion—was stricken out. After that I believe the previous question was moved, and the article, with section six as amended, was adopted. Section six is somewhat long and somewhat involved, and it did not strike me with the same force that it has since, upon consideration of it. Now the last clause of section six is decidedly in violation of the Constitution of the United States, and my object in moving a reconsideration is that I may make a motion to strike out the last clause of section six, which is a mandatory direction to the Legislature to enact laws to prohibit the introduction into the State of Chinese after the adoption of this Constitution. So far as the general question of Chinese is concerned I can say, with the gentleman from San Francisco, Mr. Casserly, who spoke yesterday, this is no new question with me. I have, for very many years, been opposed to Chinese immigration and to the residence of Chinese among us. Both in California and in the Atlantic States I have denounced it years ago, as being contrary to the policy of the State, and the well-being of the State, to have the Chinese here, and, upon broad principles of the non-assimilating character of Chinese, a bad policy to have a great mass of people who are uncongenial to us in every respect. I therefore, when this question first came before the Committee of the Whole, announced my desire to go as far as I could properly go towards remedying the evil. I am so now, but there are some questions which have been thoroughly discussed and determined by the Supreme Court of the United States, and are no longer open questions. Among others is the question as to whether a State has the right to exclude the immigration of foreigners into the State. The Supreme Court of the United States, in a series of cases, have decided that the State has no power upon that subject. The matter was very thoroughly discussed in what we call the "Passenger Cases," and in various other cases. In these cases, for instance, the States of Massachusetts and New York, for instance, attempted to exercise this direct power of forbidding the immigration of foreigners into the States. They undertook to exercise the same power by taxation, or through the power of taxation—the power of the State to tax being almost unlimited and recognized as one of the great essential reserved rights of the State. They undertook, indirectly, to effect this, and sought by recourse of taxation upon individuals, per head, to thus exclude them from coming into these States. The whole thing, as I say, has been thoroughly discussed in these cases in the Supreme Court of the United States, and they have held repeatedly that it is beyond the power of the State to exercise this power, as directly in conflict with the Constitution of the United States. Therefore this latter part of section six, making it mandatory upon the Legislature to prohibit by legislation the introduction of Chinese into this State after the

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adoption of this Constitution, is a direct and palpable conflict with the Constitution of the United States. The question presents itself to this Convention whether they desire now to go before the country—before the people of the nation—with a Constitution which defies the Constitution of the United States, and the decisions of the Supreme Court of the United States? I, for one, do not wish to be placed in that position. I, for one, ask the Convention here seriously to consider the aspect in which they will be placed, and as to whether it is judicious, whether it is wise, whether it is right, to put ourselves upon the record in absolute defiance of the Constitution of the United States, and in absolute defiance of the decisions of the Supreme Court of the United States? As a matter of course we have got to pay some attention to the Federal authorities. They have it in their power, undoubtedly, to render this proposition of no effect. They have it in their power to provide for the entire safety of these people. They have it in their power to authorize them to inherit and purchase and hold lands in this State, and contrary to all of our wishes and desires, to engraft that people upon us forever. These are the constitutional powers of the Federal Government according to a series of decisions. Now that being the case, and we seeking at this time to have the friendly interference of the General Government to rid us of this people and to assist us in every respect, and proceedings having been almost consummated to that extent, I ask again whether it is not putting ourselves in a very improper attitude to go before the country with this kind of a Constitution? I therefore ask gentlemen seriously to consider whether we shall vote for a Constitution that contains in it this provision requiring the Legislature to do that which has been so repeatedly decided to be an unconstitutional thing? The object I have in moving to reconsider is to enable me to get at that section, and therefore I hope it will prevail.

MR. LARKIN. I desire to ask the gentleman to name when and where the Supreme Court of the United States decided the Constitution of Indiana, which extended up to eighteen hundred and seventy-two, in relation to negroes and mulatoes, unconstitutional? I will read the clause. It is no more definite than the one prohibiting Chinese coming to this State.

MR. WILSON. There are a thousand unconstitutional Acts in the United States that have never been brought before any Court.

MR. LARKIN. This was brought before the Court. This was the law of Indiana up to the time of the adoption of the fourteenth and fifteenth amendments.

MR. WILSON. To the learned gentleman on constitutional law I yield.

MR. LARKIN. It says: "no negro or mulato shall come into, or settle in the State, after the adoption of this Constitution." This is in the Constitution of Indiana of eighteen hundred and fifty-one. The same provision was in the previous Constitution.

MR. EAGON. Is there any treaty between the United States and Indiana in this matter?

MR. LARKIN. It was not a question of treaty.

MR. EAGON. This is a question of treaty.

MR. LARKIN. That provision of the Constitution of Indiana was enforced in that State Government, and reaffirmed over and over by decisions declaring that provision constitutional.

MR. EDGERTON. I understand you to say that there has been adjudicated cases over and over again, deciding that clause constitutional. Will the gentleman tell me one case?

MR. LARKIN. I think I can. I know there are parties from that State——

MR. EDGERTON. I ask for a single case affirming the constitutionality of that section.

MR. LARKIN. I can go to the library——

MR. EDGERTON. You have not found it yet. I deny that any such case can be found.

MR. LARKIN. I say there are persons who have told me so; and so far as that section is concerned, the same rule will apply here.

MR. WILSON. If the power exists in the State, why go to the roundabout way of requiring the Legislature to do it? Why does not this Convention at once prohibit it?

MR. LARKIN. I propose to prevent them doing business in this State. They may come here, but as to their settlement, I believe that this State has the power to prohibit it. Therefore I shall vote against any proposition to reconsider for the purpose of amending that section.

MR. EDGERTON. Mr. President: The gentleman from Amador asked the gentleman from El Dorado a most pertinent question, and that is, whether there was any treaty between the United States and the State of Indiana. Now, sir, I would like to call the attention of the Convention to the opinion of the Constitution of the United States upon this subject; and it seems to me, with all due deference to the constitutional law of the gentleman, who insists upon retaining this part of this section in the Constitution, that there can be no doubt that such a provision is in direct conflict with the Constitution of the United States. Now, sir, the language of article six of the Constitution of the United States is as follows:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

I desire to call the attention of the gentleman from El Dorado to that section. The gentleman is a man of broad historic knowledge. He knows very well that the treaty with the Chinese Empire expressly stipulates that these Chinese may come to California; may reside here, and pursue the same vocations as subjects of the most favored nations.

MR. LARKIN. Is the word "settle" in that treaty?

MR. EDGERTON. The word "residence" is. That means the same thing. I do not see how they can reside without settling. Now, I ask the gentleman if his common sense does not dictate to him that such a clause in the Constitution of Indiana would be entirely nugatory, and in conflict with this provision of the Constitution of the United States? I deny that it was ever sustained. I think there was the same provision in the Constitution of Illinois; and everybody knows that these provisions are a mere relic of the institution of slavery; that they were incorporated in the Constitutions of these old States in order to exclude negroes from the borders of those States. It is too late to quote any such authority as that upon this question.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. President and Gentlemen of the Convention: It surprises me very much indeed to see this very sudden revolution of sentiment as expressed upon the floor of this house. I think, sir, it will be time for these gentlemen who have made this fight against this article to render their decision when they are called upon, if ever, to pass upon the constitutionality of our conduct and action here. Then, and not till then, do I consider, sir, that they have a right to pass upon the constitutionality of the action of this Convention. It would be far better and more manly for such gentlemen as Mr. Shafter, Mr. Wilson, Mr. Casserly, and those who make this effort, to draw up a proper memorial, if you please, to the President of the United States, and present it with all the power and courage of gentlemen, than to pursue this course. I, sir, admire to-day the spirit and the candor of the gentleman from Sonoma, Mr. Stuart, in his manly fight upon a former occasion; but this spirit that is spread broadcast this morning, I say, and repeat again, that it confounds my powers of thought. The gentleman from San Francisco, Mr. Wilson, asks the gentleman from El Dorado, Mr. Larkin, why he does not go directly by an act of this Convention and take ground against this thing? In answer to that, permit to say, that we do in this section four propose to do that very thing directly; and a majority of this Convention, by this unexpected somersault, voted to destroy that very section that we proposed to enact and incorporate here. I am opposed to this proposition of a reconsideration. It takes out the life and substance of the Chinese article, and I hope that this Convention will not stultify itself. Who is there within the sound of my voice believes that the Congress of the United States would have ever taken the course that they have, had it not been for the stubborn and determined course pursued by the representatives of the people of the State of California upon the floor of this Convention? After we made this appeal in behalf of our people, not only the Democratic, but the Republican statesmen of the nation have opened their mouths in vindication of our position. Now, sir, it has come to this, that we are determined to make the demand, and we make this demand in pursuance of the people's rights to-day, and in opposition to the proposition now pending for a reconsideration of the only thing left in the article on Chinese that guarantees to us the protection that we claim under State's rights. Therefore, I hope the proposition to reconsider will be voted down promptly.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I voted in favor of this article, but I hope that the motion to reconsider will prevail in order to remove the remaining objections to this section. There are evidently gentlemen here who do not scruple to violate the Constitution of the United States. I think it would be more proper to preserve our duties to that Government. There has been an appeal made to the old Indiana laws in regard to negroes. Why, in the first place, the blacks were not recognized as citizens of the United States. The Constitution requires the citizens of each State to respect the rights of citizens of other States. The trouble was that they were not citizens of the State to which they came or from which they came. There was no treaty obligation of any kind whatever. But there is an express provision of the kind in the Constitution of the United States, to prohibit our interference with foreign commerce, and commerce has been held over and over again to relate to persons as well as commodities. Cases have been cited here frequently, and it is unnecessary to again refer to them. The gentleman from El Dorado, with that broad stretch of judicial knowledge which he seems to possess, that solves everything without knowing anything [laughter], tells us his opinion. Gentlemen give us their opinions who have never read the Constitution of the United States, and set their opinions above those of men who have made a study of the law for fifty years. What is the opinion of such men worth on such a topic? If you had a five dollar case to try, would you go to one of them? and yet they set themselves up here as authority, and we have judges of constitutional law that have never read the instrument. For one, I repel the advice of such gentlemen. Go to the subjects that you understand and give advice upon them, but do not attempt to advise upon matters upon which you are as ignorant—as it is possible to be. Now as regards this treaty with China. Why, they can come here and settle. Now what is the provision in regard to that? The treaty says:

"Citizens of the United States visiting or residing in China, shall enjoy the same privileges, immunities, or exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation; and, reciprocally, Chinese subjects visiting or residing in the United States, shall enjoy the same privileges, immunities, and exemptions, in respect to travel or residence, as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States."

The Constitution of the United States gives the power to make treaties to the President of the United States, with the consent of the Senate. It also provides that all treaties made in pursuance thereof shall be the supreme law of the land. Now this provision that the State of California may prohibit the Chinese from coming into this State, is in direct

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violation of the Constitution and the treaty, as held over and over again in the "Passenger Cases." We have no power over the subject. It is an interference with the commerce of foreign nations, and there is but one course of decision upon that point. You are going to expel these people. How are you going to accomplish it? Where are you going to take them to? Are you going to buy a navy and put the Chinese aboard of it? Wise men, where are you going with them? China will tell you that you shall not land them. How are you going to land them? Are you going to put them on some island and leave them to starve? If you land them anywhere you will have to land them by force. I imagine if you start in to take a lot of Chinamen out of the State you would be met by a volley of shot and shell before you got out of the harbor, and be told that you would not be allowed to override the Constitution and laws of the United States. If you get out upon the high seas and are captured, you will be found guilty of piracy in the act you are undertaking to perform. The nations of the world will not recognize the Constitution of the State of California as legal authority. Are you going to try it? I hope some of you will.

MR. SMITH, of Fourth District. The Act of Congress just passed, as I understand, is to prohibit the introduction of Chinese into the United States. Now, would it not be proper for this State to assist in carrying out that law; and this clause that Mr. Wilson proposes to strike out, has it not reference to that particular point?

MR. SHAFTER. The law has not passed Congress yet, to start with, and I do not think this was intended for that purpose, because it was put in here three or four months before that law passed the Senate. No, sir, the State of California has no right to assist the Government at all in this respect, any more than it has to pass independent laws. Where Congress has exercised its power, that is the end of all State rights. It has been so held a half dozen times. Gentlemen who desire to adopt this provision will find that they do not understand these things on the east side of the Rocky Mountains. I have lived there too long not to know what the result will be. You may undertake to put such a provision in your Constitution, but when you violate the Constitution of the United States, and violate the moral sense of these people, they will trample your Constitution in the dirt. You try it and see this nation is not going to submit to any attempts to defy its laws, and its sense of justice. Try it on if you want to, and see. You go and lay your hands under this law on the body of a Chinaman in San Francisco, and see if you are not brought before the United States District Court, and see if you are not tried and punished, and see if the whole power of this nation is not brought to bear upon you. You are advocating secession in direct terms. You are defying the law of Congress, and the Constitution of the country, and this country will never submit to it. You will find that the moral sense of this country will revolt against such action as is proposed here. You undertake to pass such a Constitution as this, and the President of the United States will find it impossible to resist the protests that are brought to bear upon him now. The whole religious, moral, and political sentiment of the East will be brought to bear upon him, and he cannot fail to yield. I desire to vote for any fair measure that will discourage Chinese immigration, but as to voting for anything that will violate the Constitution of the United States, I will not do it.

MR. WILSON, of First District. Mr. President: I send up and ask the Secretary to read the motion I desire to make if the article is reconsidered.

THE SECRETARY read:

"Amend section six by striking out the following words: 'And it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution.'"

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: I understood that, in the great constitutional debate which took place upon this question in Committee of Whole, that the case was closed, and it was closed against those gentlemen who now attempt to revive it and to prevent the insertion in this Constitution of the clause just read. The verdict of the Committee of the Whole was that, under the police power reserved to the States, we had this power. Authority after authority, decision after decision of the Supreme Court of the United States, was cited here for the purpose of showing that the States had this power; for the purpose of showing that the States had the right to exclude from settlement in their midst, and from their border, all elements which tended to disturb, to destroy, or to hurt the peace of the commonwealth. We showed that in the Passenger cases, that seven of the Judges in that case distinctly admit that the States had that power—that that right was reserved in them. With reference to the treaty power we showed, from the best authorities, that the treaty-making power could not exercise a power or accomplish an object which the whole Government of the United States could not do; that is, the legislative department. Now, sir, after this doctrine has been thoroughly and exhaustively discussed on this floor, after months have passed, after the press of the State have discussed the article and discussed the doctrine, it seems to me like springing a trap almost on this Convention at this eleventh hour to make a combined attack upon that doctrine as we have enunciated it in the Chinese article. Now, as to the practical use, under historical facts and the present, of maintaining in the Constitution the clause which has been read. Let us suppose, Mr. President, that the bill which has passed the Senate and gone to the House of Representatives, and which will probably go to the President for his signature, has become a law. That bill provides that no vessel shall bring to these shores more than fifteen Chinese passengers. The remedy there against this vast influx, throwing thousands upon our shores, would seem ample and complete; but is it? On our southern boundary exists a foreign territory. The Colorado River, which partly runs in this State and branches on the territory of a foreign power, affords an opportunity for rendering this law nugatory, practically, in all its aspects. What have the Chinese companies to do to defeat this Act? They have only to establish a colony on the other side of the line, below Fort Yuma, and there receive inhabitants from China in as large numbers as they have heretofore entered the Golden Gate. That colony will then be the supply of Chinese labor to the California market, and you cannot stop it. They will merely have to walk across the line, and how are you going to stop them under this Act? I say, sir, that we want exactly that power and that authority in this Constitution, to prevent the inundation, which has come heretofore by sea, from coming hereafter by land. It seems to me that the gentlemen who are learned in the law, those gentlemen who have spent forty years fingering over the vast tomes of musty legal literature, have come in here for the purpose—Mr. President, I am not in the habit of using slang terms, but I cannot think of any other—of bulldosing the gentlemen of this Convention by their superior attainments in that special line; to terrorize them from voting finally for this clause, on the ground that they are placing themselves in direct and rebellious antagonism to the Government of the United States. If gentlemen will remember the debate upon this floor, they will recollect in their minds how thoroughly we vindicated ourselves from any such aspersion, and they will not, at this late day, allow themselves to be frightened into leaving the solid and the tenable position for our own people which they took on that occasion. Mr. President, I hope that this article will not be reconsidered. I hope that this clause will not be stricken out. I hope that we will stick to what we have done, and that we will not present ourselves to the people of this State as the fickle beings which such action would show us to be.

MR. WEST. Mr. President: Believing that this question has been fully discussed, and that the Convention has expressed its opinion upon this article, I move to lay the motion to reconsider on the table.

Upon which the ayes and noes were demanded by Messrs. Wilson of First District, Brown, Freud, Barton, and Barry.

The roll was called, and the motion to lay on the table prevailed by the following vote:

AYES.

Andrews,	Herrington,	Rhodes,
Ayers,	Hilborn,	Ringgold,
Barbour,	Howard, of Mariposa,	Smith, of Santa Clara,
Barry,	Hughey,	Smith, of 4th District,
Barton,	Hunter,	Smith, of San Francisco,
Beerstecher,	Joyce,	Soule,
Bell,	Kenny,	Stedman,
Brown,	Kleine,	Sweasey,
Caples,	Lampson,	Swenson,
Condon,	Larkin,	Swing,
Davis,	Lavigne,	Tinnin,
Dean,	Lindow,	Tully,
Dowling,	McComas,	Tuttle,
Doyle,	McCoy,	Vacquerel,
Dunlap,	Miller,	Van Dyke,
Estee,	Moffat,	Walker, of Marin,
Evey,	Moreland,	Walker, of Tuolumne,
Filcher,	Morse,	Waters,
Freeman,	Nason,	Webster,
Freud,	Nelson,	Wellin,
Gorman,	Neunaber,	West,
Grace,	Ohleyer,	Wickes,
Hager,	O'Sullivan,	White,
Harrison,	Reed,	Wilson, of Tehama,
Heiskell,	Reynolds,	Wyatt—76.
Herold,		

NOES.

Belcher,	Hitchcock,	Porter,
Biggs,	Holmes,	Prouty,
Boucher,	Huestis,	Rolfe,
Burt,	Inman,	Schell,
Campbell,	Johnson,	Schomp,
Casserly,	Jones,	Shafter,
Chapman,	Larue,	Shurtleff,
Charles,	Lewis,	Stevenson,
Crouch,	Mansfield,	Stuart,
Eagon,	Martin, of Santa Cruz,	Thompson,
Edgerton,	McCallum,	Townsend,
Estey,	McConnell,	Turner,
Garvey,	McFarland,	Van Voorhies,
Glascock,	McNutt,	Weller,
Hall,	Mills,	Wilson, of 1st District,
Harvey,	Noel,	Mr. President—47.

LAND MONOPOLY.

MR. VACQUEREL. Mr. President: I call up the notice I gave and move to reconsider the vote by which the article on miscellaneous subjects was ordered engrossed for a second reading.

MR. WELLIN. I second the motion.

REMARKS OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: On yesterday the previous question cut off all debates and amendments, and as it is about the fifth or sixth time that I have tried to introduce a proposition, I thought I could do no better than to give a notice of reconsideration. The proposition that I shall endeavor to offer if the reconsideration takes place, is a proposition that tends to destroy land monopoly at the end of a certain number of years. It is a system that exists in Louisiana, Canada, and other parts of the world. This is the proposition:

"No person shall ever be allowed to dispose of more than one third of the real and personal property of which he dies seized. The remaining

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two thirds of the property of the decedent shall descend to the heirs, in the manner provided by law."

This is the way of reaching land monopoly that does not hurt any one. It acts by death. As it is to-day, a man has a right to make a will and leave all his property to one child and leave the others without any. If a man owns twenty thousand acres of land, and happens to die, and has four children, it will be divided between four. When these children die the land will be divided among their children, and an estate of twenty thousand acres, in the course of about twenty or twenty-five years, will be divided into about fifteen parts. Now, this proposition does not tend to rob anybody. It does not say to one man, you must acquire but so much. Man has a right to acquire all the property he wants. It only tends by natural law to distribute the land.

Now, I know that some gentlemen will say that a man's property is his own, and he has a right to give it to whoever he pleases. Now, I deny that a man that gets married and has any children has a right to disinherit any of them. I deny that a man has a right to give all his property to one, and none to the rest. I do not care how they are brought up. A man spends his time in bar-rooms instead of bringing up his children rightly, and then when one of them goes wrong he disinherits him. I believe that this section will tend to the destruction of land monopoly, and therefore I hope the motion to reconsider will prevail.

MR. WEST. Mr. President: I move that the motion to reconsider be laid on the table.

MR. McCALLUM. I second the motion.

Upon which the ayes and noes were demanded by Messrs. Vacquerel, Lavigne, Wellin, Kleine, and Dowling.

The roll was called, and the motion to lay on the table prevailed by the following vote:

AYES.

Andrews,	Harvey,	Rhodes,
Belcher,	Heiskell,	Rolfe,
Biggs,	Holmes,	Schell,
Boucher,	Howard, of Mariposa,	Shafter,
Brown,	Hunter,	Smith, of Santa Clara,
Campbell,	Inman,	Stevenson,
Caples,	Lampson,	Swing,
Casserly,	Larkin,	Thompson,
Chapman,	Larue,	Tinnin,
Crouch,	Mansfield,	Tully,
Dean,	Martin, of Santa Cruz,	Tuttle,
Edgerton,	McCallum,	Van Dyke,
Estey,	McComas,	Walker, of Tuolumne,
Evey,	McNutt,	Waters,
Freeman,	Nason,	Weller,
Garvey,	Noel,	West,
Glascock,	Ohleyer,	Wickes,
Hager,	Porter,	Wilson, of 1st District,
Hale,	Reed,	Mr. President—57.

NOES.

Barbour,	Herrington,	Ringgold,
Barry,	Hitchcock,	Schomp,
Barton,	Hughey,	Shurtleff,
Beerstecher,	Jones,	Smith, of 4th District,
Bell,	Joyce,	Smith, of San Francisco,
Burt,	Kenny,	Soule,
Condon,	Kleine,	Stedman,
Davis,	Lavigne,	Stuart,
Dowling,	Lewis,	Sweasey,
Doyle,	Lindow,	Swenson,
Eagon,	McConnell,	Townsend,
Estee,	McCoy,	Vacquerel,
Filcher,	Miller,	Walker, of Marin,
Freud,	Mills,	Webster,
Gorman,	Nelson,	Wellin,
Grace,	Neunaber,	White,
Hall,	O'Sullivan,	Wilson, of Tehama,
Harrison,	Prouty,	Wyatt—56.
Herold,	Reynolds,	

SPECIAL ORDER—ADDRESS.

MR. BARRY. Mr. President: I call for the special order for ten o'clock to-day. The question of the address to the people of this State was set for ten o'clock to-day. I know the hour has passed, but I move it now be taken up.

MR. EDGERTON. I would inquire whether that motion is for an address to the people to vote against the Constitution or for it?

MR. BERRY. Such an address as the Convention should prepare, to induce the people of this State to vote for the Constitution and adopt it.

THE PRESIDENT. The Secretary will read the resolution offered by Mr. Tinnin.

THE SECRETARY read:

"*Resolved*, That the President of this Convention is hereby authorized to appoint a committee of five members of this body, whose duty it shall be to draft and publish a memorial to the people of this State such recommendations as they may think proper in regard to the adoption of the Constitution formed by this body. Said memorial or recommendation to be ratified by this Convention before publication."

MR. BARRY. I move the adoption of the resolution offered by Mr. Cross.

THE SECRETARY read:

"*Resolved*, That a committee of nine be appointed to prepare and report to the Convention an address to the people of the State, carefully reviewing the Constitution presented by this Convention, and indicating the material changes made in the existing Constitution, and that such address be made public in such manner as this Convention shall direct."

MR. McCALLUM. Mr. President: I offer a substitute by way of amendment.

THE SECRETARY read:

"*Resolved*, first, That a committee be appointed in such manner as the Convention shall direct, to prepare an address to the people, explaining the material amendments proposed, and recommending the adoption of the new Constitution; second, that said committee shall consist of nine members of this Convention."

MR. McCALLUM. Mr. President: The first difference between that and the one presented by Mr. Cross is that it leaves the Convention to indicate, by another resolution, how the committee shall be appointed. I propose to have each proposition separate. Another difference is this, that the first proposition merely declares that the committee shall explain the material amendments, and goes no farther. In my judgment, there is no object in appointing a committee unless that committee is to recommend a new Constitution proposed by this Convention. The second resolution there—and it is placed second only that it may be convenient to have a vote on these resolutions separately—is simply to indicate the number of the committee; it is placed at nine, the same as the original proposition. I find that in the State of Illinois this practice was adopted, and I believe it has been usually adopted. In the Constitutional Convention of Illinois the language was to "appoint a committee consisting of nine members, to prepare an address to the people of the State, to accompany the Constitution, explaining the same and urging its adoption." This resolution in the Illinois Convention was afterwards changed so that a select committee was appointed for the purpose of nominating the committee which was to prepare the address. I would have included that in my resolution, but as I did not desire to be on that committee, I preferred to leave that to some other member to move if the Convention should adopt this as a substitute, because then it will be open for describing the manner in which this Committee on Address should be appointed. This select committee reported a committee on address, consisting of nine members, to which some others were added. That committee reported an address to the Convention and the Convention adopted it, which I suppose would be the proper course here; the committee should report to the Convention, and the Convention adopt the address. I submit to the Convention that the better manner of proceeding will be to adopt this substitute.

MR. EAGON. Mr. President: I hope, sir, that nothing will be done on these resolutions, but to reject all amendments, whatever they may be. Now, sir, it looks to me very much like presuming upon the ignorance of the people. The people have sent us here to do a job of work, and this looks as if we thought we had done a bad job. The people are intelligent enough to know whether this Constitution suits them, and to reject it if it does not. I hope this will not be done. Now, sir, if this is a good Constitution it needs no such address to the people of this State. If it is bad work, it will show at once that we are trying to cover up the bad points in the Constitution. The people have talked a good deal about this matter and they are capable of judging. Let us send this Constitution out without any embellishments, and let the people adopt it if they think it a good one, and reject it if they think it a bad one. I shall vote against any such proposition.

MR. SCHELL. Mr. President: The main point of objection that I discover to a resolution of this kind is this: in order to get an address of that kind properly before the people it would be necessary that it should be published in every county in the State. The object would be to get it before the people so that everybody could read it, and it would be necessary to publish it in every county in the State. Now, sir, I think finances are rather low so far as this body is concerned.

MR. BIGGS. I find in the Missouri Constitution a committee of thirteen published in the back of the Constitution a synopsis of the new Constitution, commencing at the bill of rights, and that was read ten times as much as the Constitution was. I will just show it to you.

MR. SCHELL. That may all be; yet, as I had occasion to remark here the other day, I hope that this body has got some sense of its own. I am making this point, whether or not we are going to incur a large amount of expense here for the purpose of setting this matter before the people of this State. Where are the means coming from? That is the point.

MR. McCALLUM. Don't you believe that every enterprising paper in the State would publish it as a matter of information?

MR. SCHELL. That is a question I cannot answer.

MR. McCALLUM. Any one else can answer it.

MR. SCHELL. My experience with newspapers is, that you can most always get any proper subject published if you are ready to come down with the coin for doing it. We have provided in one of the articles for publishing and sending out the Constitution, and that should be sufficient. So far as that is concerned I agree with the gentleman from Amador, that the people are presumed to be intelligent and be able to read and judge for themselves, and will be able to ascertain and determine what the material changes are that have been made; so I think, taking all these matters into consideration, it is unnecessary to adopt an address to the people.

MR. GRACE. Mr. President: If matters go on as they have these last few days, and we keep adding to and striking out all that is vital and that interests the people, the main sections that we were sent here to engraft in the Constitution, I am in favor of this address, because, Mr. President, I tell you it will need something besides the document to recommend it to the favorable consideration of the sovereign people of the State of California. We have, in the last few days, trimed it down until it is a mere wreck of its former grandeur. We have taken out the main sections that interested the people of this State more vitally than anything else. When this Chinese question was before the Congress of the United

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States and waiting the signature of the President, we have, right in the face of all this work, taken out sections that tend to weaken this Constitution more with the people of this State than all the work that we can do in writing out addresses for the favorable consideration of the people.

MR. SMITH, of Fourth District. Mr. President: It seems to me that this is a very necessary matter. There are a great many people in this State that have never read the old Constitution.

MR. SMITH, of San Francisco. How do you know the people never read it?

MR. SMITH, of Fourth District. I have been among the people, and know a good deal of them. I know a majority of the people of every State do not understand the Constitution. Now, it seems to me that the members of this Convention, who get up this Constitution, understand the reasons leading them to the principal changes here better than the people of this State. There has been no time for the people to understand the changes in the Constitution. This Convention can assist them by bringing together in compact form the principal changes in the Constitution. I was met upon the street yesterday by a very intelligent gentleman, who wanted know why a certain change was made. He was against it, because he did not understand why the change was made. He could not find out from the papers, and he supposed that he could find out better by asking a delegate to the Convention. Now, these questions will be asked all over the State. A syllabus of the changes in this Constitution would be read more than the Constitution. The writer would have the two Constitutions before him, and would be able to point out the changes and the reasons for them. Would that not be a great assistance to the people? It seems to me so. It seems to me that it is necessary, and I see no reasons against it. It will not cost anything of any moment. We have already provided that this Constitution shall be published in pamphlet form. Why may not this address be published in the same pamphlet? The additional expense will not amount to anything.

MR. STEDMAN. Mr. President: I hope the resolution offered by Mr. Cross will receive the serious consideration and attention of this Convention, and finally be adopted. I think, sir, that it is necessary that we should send to the people such an address. Our Constitution is a long one, and it would be well for us to set forth in concise terms the changes we have made in this Constitution, as compared with the old one. I find, sir, that in the Convention of Ohio they refused to send out an address to the people, and their Constitution was beaten by an overwhelming majority. I find that the Convention of Illinois, of New York, of Massachusetts, and, in fact, all other Conventions, have sent out an address similar to the one called for in the resolutions. So far as the objection of Mr. McCallum is concerned, I am willing to trust the President of this Convention with the appointment of this committee. I do not see any necessity, sir, of appointing a select committee to name a committee to prepare this address. I think, sir, that the President of the Convention is well able to appoint this committee. I believe it will do a vast amount of good, and materally aid us in the adoption of our Constitution. I am sure, sir, there is a vast majority of this Convention in favor of the Constitution which we have framed, and who will do all they can to secure its adoption by the people.

MR. ESTEE. Under the rule the committees are all appointed by the Chair. It would take a two-thirds vote to adopt this amendment.

MR. EDGERTON. Judge Story wrote a review of the Constitution of the United States, and it took two huge volumes, and it is a much shorter document than this.

Messrs. Inman, Jones, Campbell, West, and Webster demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. McCallum, the ayes and noes were demanded by Messrs. McCallum, Brown, Tully, White, and Gorman.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barbour,	Herrington,	Morse,
Barton,	Hunter,	Nason,
Beerstecher,	Inman,	Nelson,
Bell,	Joyce,	Neunaber,
Brown,	Kenny,	O'Sullivan,
Caples,	Kleine,	Reynolds,
Condon,	Lampson,	Rhodes,
Dean,	Larkin,	Smith, of Santa Clara,
Dowling,	Larue,	Smith, of 4th District,
Doyle,	Lavigne,	Smith, of San Francisco,
Evey,	Lindow,	Sweasey,
Freud,	Martin, of Santa Cruz,	Tuttle,
Garvey,	McCallum,	Vacquerel,
Gorman,	McComas,	Weller,
Grace,	Mills,	White,
Hager,	Moffat,	Wilson, of Tehama,
Hale,	Moreland,	Wyatt—52.
Harrison,		

NOES.

Andrews,	Charles,	Hall,
Barry,	Crouch,	Harvey,
Belcher,	Davis,	Heiskell,
Biggs,	Dunlap,	Hilborn,
Blackmer,	Eagon,	Hitchcock,
Boucher,	Edgerton,	Holmes,
Burt,	Estee,	Howard, of Mariposa,
Campbell,	Estey,	Huestis,
Casserly,	Filcher,	Johnson,
Chapman,	Glascock,	Jones,
Lewis,	Ringgold,	Tully,
Mansfield,	Rolfe,	Turner,
McConnell,	Schell,	Van Dyke,
McCoy,	Shafter,	Van Voorhies,
McFarland,	Shurtleff,	Walker, of Marin,
McNutt,	Soule,	Walker, of Tuolumne,
Miller,	Stedman,	Waters,
Murphy,	Stevenson,	Webster,
Noel,	Stuart,	Wellin,
Ohleyer,	Swing,	West,
Porter,	Thompson,	Wickes,
Prouty,	Tinnin,	Wilson, of 1st District,
Reed,	Townsend,	Mr. President—69.

Upon the adoption of the resolution of Mr. Cross, the ayes and noes were demanded by Messrs. Barry, Condon, Stedman, McCoy, and Gorman.

The roll was called, and the resolution was rejected by the following vote:

AYES.

Andrews,	Heiskell,	Prouty,
Ayers,	Herrington,	Reynolds,
Barry,	Inman,	Rhodes,
Barton,	Johnson,	Ringgold,
Biggs,	Lavigne,	Rolfe,
Blackmer,	Lindow,	Shurtleff,
Boucher,	McComas,	Smith, of Santa Clara,
Burt,	McConnell,	Smith, of 4th District,
Campbell,	McCoy,	Stedman,
Caples,	Mills,	Sweasey,
Charles,	Moffat,	Tuttle,
Davis,	Moreland,	Webster,
Dunlap,	Morse,	Weller,
Estee,	Nason,	Wellin,
Evey,	Nelson,	Wickes,
Freud,	Neunaber,	Wilson, of Tehama,
Hale,	Ohleyer,	Wyatt—53.
Harvey,	O'Sullivan,	

NOES.

Beerstecher,	Hilborn,	Porter,
Belcher,	Hitchcock,	Reed,
Bell,	Holmes,	Schell,
Brown,	Howard, of Mariposa,	Shafter,
Casserly,	Huestis,	Smith, of San Francisco,
Chapman,	Hunter,	Soule,
Condon,	Jones,	Stevenson,
Crouch,	Joyce,	Thompson,
Dean,	Kenny,	Townsend,
Dowling,	Kleine,	Tully,
Doyle,	Larkin,	Turner,
Eagon,	Larue,	Vacquerel,
Edgerton,	Lewis,	Van Dyke,
Estey,	Mansfield,	Van Voorhies,
Filcher,	Martin, of Santa Cruz,	Walker, of Marin,
Garvey,	McCallum,	Walker, of Tuolumne,
Glascock,	McFarland,	Waters,
Gorman,	McNutt,	West,
Grace,	Miller,	White,
Hager,	Murphy,	Wilson, of 1st District,
Hall,	Noel,	Mr. President—64.
Harrison,		

PAIRED—Mr. Swing, aye, with Mr. Barton, no.

MR. WEST. Mr. President: I move the adoption of the resolution offered by Mr. Huestis.

THE PRESIDENT. It is out of order. A resolution of the same character has just been voted down.

RESOLUTIONS.

MR. BEERSTECHER. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the President appoint three additional members upon the Committee on Revision and Adjustment.

MR. FREUD. I second the motion.

MR. BEERSTECHER. Mr. President: The Committee on Revision and Adjustment consisted originally of nine members. On last week the gentleman from El Dorado, Mr. Larkin, made a motion that six additional members be appointed upon that committee, raising it from nine to fifteen. The Chair appointed the six additional members, and the committee consists now of fifteen members. The Chairman of the committee appointed originally, was Mr. Dudley of San Joaquin. He is not here, and I understand he has resigned the Chairmanship of the committee, and he probably will not be here. Mr. Eugene Fawcett is also a member of that committee, and I understand that he will not be here. Mr. Howard——

THE PRESIDENT. The gentleman's motion will be out of order, he must give his notice.

MR. BEERSTECHER. All right. I give the notice, and ask that it be printed in the Journal. I want to take it up to-morrow.

MR. HAGER. Mr. President: I would like to offer a resolution in regard to the Committee on Revision and Adjustment.

THE SECRETARY read:

Resolved, That the Committee on Revision and Adjustment be allowed a Clerk.

MR. HAGER. I will state with regard to that committee, for the information of the Convention, that Mr. Dudley did resign the Chair-

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manship but did not resign his position on the committee. The committee, as it now stands, is composed of sixteen, which is an unusually large number for a committee. It is rather unwieldy. I am willing to retire and give my place to any one who wants it. The larger the committees are the less work is done, and the more trouble there is in getting them together. It will be necessary to have a Clerk, and I make the motion because I stand next on the list to Mr. Dudley.

THE PRESIDENT. The resolution will have to go to the Committee on Contingent Expenses.

LEGISLATIVE DEPARTMENT.

THE PRESIDENT. The article on legislative department is before the Convention.

MR. SHURTLEFF. Mr. President: I offer an amendment to section twenty-seven.

THE SECRETARY read:

"Amend section twenty-seven by adding the following at the end of the section: 'Any county, or city and county, containing a population greater than the number required for one Congressional district, shall be be formed into one or more Congressional districts, according to the population thereof, and any residue after forming such district or districts, shall be attached, by compact adjoining Assembly districts, to a contiguous county or counties, and form a Congressional district. In dividing a county, or city and county, into Congressional districts, no Assembly district shall be divided so as to form a part of more than one Congressional district, and every such Congressional district shall be composed of compact contiguous Assembly districts.'"

MR. SHURTLEFF. Mr. President: Unless an amendment of that nature is adopted it leaves San Francisco in a position that a partisan majority in the Legislature can gerrymander it in a way that might often defeat in many respects the will of a majority of the electors of that district. Unless there is a guard of that kind put into the Constitution, the Legislature cannot only separate Senatorial districts, but they can divide Assembly districts. They can draw irregular lines passing zigzag across the city. I hope, in order to secure a fair division that this amendment may be adopted. I think that the experience of the whole country proves that such a restriction should be placed in the Constitution. Why, as far back as eighteen hundred, this matter of abuse in the division of Congressional districts commenced. The word "gerrymander" that has a place in the political literature of the day, took its name, as most of us remember here, from Eldridge Gerry, who was Governor of Massachusetts, in eighteen hundred and twelve, when that State in a certain manner was divided. And he being the leader of the party, it was laid upon him, though it was afterwards found out, that, although a member of the party that made the unjust division, he advised against it. I hope that this amendment will be adopted, for it will certainly be a guard against unfair political action hereafter.

MR. ESTEE. Mr. President: No one can object to that, and it will have the effect suggested by my friend from Napa. You will find a similar provision in all new Constitutions.

The amendment was adopted.

MR. INMAN. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section twenty-two as follows: Strike out, in lines ten and eleven, the words, 'or sick, or disabled.'"

MR. INMAN. Mr. President: The section as it stands includes county hospitals. I do not suppose there will be any objection to striking it out.

The amendment was adopted.

MR. VAN DYKE. Mr. President: I move to amend section two, line five, by striking out the word "called," and insert the word "holden." The object of that is: that the word called has no application. The first session will not be a called session.

MR. HAGER. If we strike out the word called, that would accomplish the result without inserting anything. I move a division of the question.

MR. VAN DYKE. I accept that amendment.

The amendment was adopted.

MR. McCALLUM. Mr. President: I desire to offer an amendment, as one member of the Legislative Committee, in the absence of the Chairman of that committee.

THE SECRETARY read:

"Amend section twenty-one, line two, by striking out the word 'any,' before the word 'State,' and inserting the word 'this.'"

MR. McCALLUM. Mr. President: That is the way it came from the committee, but on motion of Mr. Reynolds, the word "any" was inserted in place of the word "this;" that having been done, the plain and palpable inconsistency which exists here would not be corrected by the Revision Committee. Were it not for the fact of action having been taken upon it, I suppose the Revision Committee would correct it. As it reads now, it makes nonsense, when taken in connection with the last clause of the section. It requires that our Legislature shall provide for punishing as a felony an embezzlement which occurred in any other State. I suppose there can be no question about this.

MR. BROWN. Mr. President: I wish to state before this body that there was quite a discussion upon this subject, and that the conclusion was arrived at upon principle and in an intelligent way. It was considered at that time, and so discussed, that if any one in another State had been guilty of embezzlement or defalcation, that he should not, when he was here, pass along as if he had never done anything of the kind; but that this same wrongdoing should come up against him as much as though he had committed that deed here. This is not a mere error in words; it embraces a principle, and that principle was discussed at length, and it was considered proper that any person convicted of an embezzlement or defalcation of public funds of any State, that the same should be recorded against him here, and prevent him from holding office. I am in hopes it will not be stricken out.

MR. CAMPBELL. Mr. President: It was obviously the intention of the Convention that a person who had been convicted of embezzlement or defalcation of the public funds of any other State, should be incompetent to hold office here. The section is right enough now, but in inserting the amendment, the word "such," in the fourth line was evidently overlooked, and it makes nonsense, unless the proper amendment is made by striking out the word "such," in the fourth line. Then the section will read:

"No person convicted of the embezzlement or defalcation of the public funds of any State or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony."

I will offer that as an amendment to the amendment if the gentleman will accept it.

MR. SCHELL. What right has this State to punish as a felony any defalcation of funds made by a person in another State?

MR. CAMPBELL. As I propose it will not provide for anything of the kind.

MR. SCHELL. Would it not be better to strike out all after the word "State," in the third line?

MR. CAMPBELL. That would be really just as well, because the State will always punish embezzlement and defalcation; but the section as it now stands is nonsense. I will send up my amendment.

THE PRESIDENT. It is not in order at present.

MR. AYERS. Mr. President: The section as it now stands is manifestly incorrect. The amendment proposed by the gentleman from Alameda, Mr. McCallum, ought not to be made, because that word "any" was inserted on principle. We do not want men who have been convicted of embezzlement in other States to come here and enjoy office. The proper way to amend it would be to strike ont the word "such," in line four, or else strike out all the words after "State," in line three.

MR. REYNOLDS. Mr. President: I do not care what this Convention does with the word "any," where it occurs before the word "State." nor do I care what it does with the section. The amendment is based upon a hypercriticism. I will only remark that I do not see any reason why, if we prohibit those who are convicted of defalcations in this State from holding offices of trust or profit, why we should permit those who have been convicted of the same offense in other States to come here and hold such offices. I do not see why a defaulter from another State should be considered any better than one of our own.

MR. CAMPBELL. I will ask the gentleman if he proposes to punish a man here for an offense committed in another State?

MR. REYNOLDS. Does the gentleman assume the preposterous position that the Legislature will proceed to enact laws to punish embezzlement committed in other States? Now, sir, the word "such," in the fourth line, does not refer to the word "any." It refers to the defalcation of public funds, and not the public funds of any other State than this State.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda, Mr. McCallum.

The amendment was rejected.

MR. EDGERTON. Mr. President: I move to strike out the word "such," in line four, and insert, after the word "defalcation," in lines four and five, the following: "of the public funds of this State."

MR. AYERS. That is right.

MR. CAMPBELL. I have an amendment to the amendment.

THE SECRETARY read:

"Strike out of section twenty-one the word 'such,' in line four."

MR. CAMPBELL. Now, sir, the reason I offer this is, that the amendment of the gentleman from Sacramento provides simply for the punishment of embezzlement or defalcation of funds of this State.

MR. EDGERTON. I accept that amendment. I think that covers the ground.

MR. McCALLUM. Mr. President: I desire to say that section twenty-one, as proposed by my amendment, would have been precisely the Constitution as it is. Inasmuch as the word "any" has now been retained by striking out the word "such," the difficulty will be removed and in no other way.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Sacramento to strike out the word "such."

The amendment was adopted.

MR. WEST. Mr. President: I desire to offer an amendment to section twenty-three.

THE SECRETARY read:

"Strike out the word 'eight,' in line three, and insert the word 'six.'"

MR. WEST. Mr. President: Inasmuch as the Legislature will be the watch-dogs of the treasury, it is important and necessary that their ideas of economy should be practical. I do not propose to advocate this any more than to recommend it to the good common sense of this Convention, and upon the adoption of this motion I call for the ayes and noes.

The ayes and noes were demanded by Messrs. Evey, Brown, Kenny, Stuart, and Nason.

The roll was called, and the amendment rejected by the following vote:

AYES.

Boucher,	Hager,	Rhodes,
Burt,	Heiskell,	Shafter,
Chapman,	Johnson,	Smith, of Santa Clara,
Charles,	Mansfield,	Stuart,
Crouch,	McComas,	Tuttle,
Dowling,	McConnell,	Weller,
Evey,	Moreland,	West,
Filcher,	Nason,	White—26.
Freud,	Prouty,	

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NOES.

Andrews,	Hilborn,	Reed,
Ayers,	Hitchcock,	Reynolds,
Barbour,	Holmes,	Ringgold,
Barry,	Howard, of Mariposa,	Rolfe,
Barton,	Huestis,	Schell,
Beerstecher,	Hunter,	Schomp,
Belcher,	Inman,	Shurtleff,
Bell,	Jones,	Smith, of 4th District,
Biggs,	Joyce,	Smith, of San Francisco,
Blackmer,	Kenny,	Soule,
Brown,	Kleine,	Stedman,
Campbell,	Lampson,	Stevenson,
Caples,	Larkin,	Sweasey,
Casserly,	Larue,	Swenson,
Condon,	Lavigne,	Swing,
Davis,	Lewis,	Thompson,
Dean,	Lindow,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Townsend,
Eagon,	McCallum,	Tully,
Edgerton,	McCoy,	Turner,
Estee,	McFarland,	Vacquerel,
Estey,	McNutt,	Van Dyke,
Garvey,	Miller,	Walker, of Marin,
Glascock,	Mills,	Walker, of Tuolumne,
Gorman,	Moffat,	Waters,
Grace,	Morse,	Wellin,
Hale,	Murphy,	Wickes,
Hall,	Nelson,	Wilson, of Tehama,
Harrison,	Neunaber,	Wilson, of First District,
Harvey,	Noel,	Wyatt,
Herold,	Ohleyer,	Mr. President—95.
Herrington,	O'Sullivan,	

Messrs. Tully, Larue, Waters, Mansfield, and Murphy demanded the previous question.

The Convention refused to order the main question.

MR. VAN DYKE. Mr. President: I move to amend section twenty-five by striking out the last subdivision thereof. I conceive that this is a very dangerous provision to have in this Constitution. The section prohibits the Legislature from passing certain local laws. After we have enumerated all we can think of, then we put in a clause here which gathers up everything else: "In all other cases where a general law can be made applicable." By a declaration in the bill of rights we have made this Constitution mandatory, except where otherwise provided. The result of leaving that in the Constitution will be to endanger every law to an adjudication upon the question, whether the Legislature could or could not pass a general law to cover it. In other words, the Legislature would not be the judge of the matter. We specify here thirty-two cases where the Legislature shall not pass laws local or special in their nature, and then we have added one which covers all we have enumerated, and possibly a great many others which we forgot to enumerate. It will leave the whole Legislature in doubt and uncertainty. Now, if we know of any more subjects than we have enumerated, let us right here and now specify them and stop. But I think this is decidedly dangerous. If it was merely directory it would be a different thing; but it is mandatory.

MR. WYATT. Mr. President: I agree with the motion to strike out subdivision thirty-three of section twenty-five. The article is now too iron-bound upon the Legislature, and makes it too uncertain as to the character of legislation that is not included within the prohibitory clause; and I therefore hope it will be stricken out.

MR. BIGGS. Mr. President: I am very much in hopes that that will not be stricken out. It is found in all the modern Constitutions.

MR. VAN DYKE. All other Constitutions do not make it mandatory in every case.

MR. BIGGS. I want it mandatory—and I tell the gentleman to take his seat. [Laughter.] I hope we will stand by what was adopted in the Committee of the Whole; stand by the report just the way it is here, and not strike it out.

MR. McCALLUM. Mr. President: If there is any one clause in this section twenty-five that ought not to be stricken out it is the last clause in it. Almost every State Constitution recently made, contains the same provision, and it is intended to cover various cases of special and local legislation which might come up; the idea is to abolish special and local legislation entirely. We have enumerated thirty-two cases, and cover the balance by this general clause. Why should there be any special legislation in any case where a general law can be made applicable? The gentleman who proposes to strike it out ought to suggest wherein some local or special Act would be proper where a general law would not be applicable.

THE PRESIDENT. The question is on the adoption of the amendment offered by the gentleman from Alameda.

The amendment was rejected.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

Mr. Murphy in the chair.

PETITION.

MR. McFARLAND. Mr. President: I ask leave, out of order, to present a petition. I have the honor to present a petition signed by some three hundred ladies of Sacramento City, asking of this Convention—to use their own language—"such provision in the new Constitution as will tend to secure to the women of the land a voice in the government of the country, by affording them the opportunity to exercise the right of suffrage." There are also about sixty other names signed to a similar petition, which could not, in the brief time, be transferred to this. The signers of this petition have not, therefore, taken any active public part in this movement. They cannot be called brawlers or seekers of notoriety. They are the mothers, wives, sisters, and daughters of as good, intelligent, and respectable citizens as there are in this State. This petition is the result of a plan for concert of action, inaugurated in this city within a day or two. If final action shall not be taken by this Convention on the matter of woman suffrage before further efforts can be made, they propose to add to the signers of this petition several hundred other names. Mr. President, the main argument used by the opponents of woman suffrage is, that women do not desire it. The character of the women who have signed this petition, and the large number of signers obtained in so short a time, considering the contemptuous opposition made by so many husbands and fathers, is, to my mind, a refutation of that argument. I firmly believe that if a fair expression of the sentiments of all the women in this State could be obtained, without any intimidation by the men who now so largely control their destinies, it would be found that a majority of them are to-day in favor of having the right to vote. I hope, sir, that this petition will have some influence in the final passage of the article on the elective franchise.

The petition was received, and laid on the table.

RESOLUTION RELATIVE TO MINING DEBRIS.

MR. REED. Mr. President: I ask leave to present a resolution and memorial.

THE SECRETARY read:

WHEREAS, The Sacramento River, the great natural highway of this State, so important for the transportation of the products of the Sacramento Valley, has for many years been filling up with debris and obstructions of other character, thus destroying the navigation of said river to an extent that large steamers are now entirely unable to navigate the waters of the upper Sacramento for a distance of one hundred and fifty miles, where, ten years ago, such steamers were engaged in carrying the products of a large area of country with such facilities for navigation as to inure to the great benefit of the producers, now entirely closed; and, whereas, from the rapidity with which the navigation of so much of said river has been rendered useless, there can be no doubt but that, in the course of a very few years, the entire navigation of the said Sacramento River will be effectually closed, thus producing great inconvenience and distress to the entire producing classes now engaged in agricultural pursuits; therefore,

Resolved, That our Senators and Representatives in Congress be and they are hereby requested to use all honorable endeavors to procure the adoption of the amendment to the appropriation bill now pending before Congress, introduced in the Senate by the Honorable A. A. Sargent.

REMARKS OF MR. REED.

MR. REED. Mr. President: I will state that generally I am opposed to the introduction of resolutions of this character in a Constitutional Convention. But we have passed many such resolutions here, which were not one tenth part as important as this, and I ask the indulgence of this Convention to pass this resolution, and that it be telegraphed at once to Washington, as the harbor appropriation bill will probably be acted upon to-morrow, or next day. There is no provision for telegraphing, and I propose to do that at my own expense. This is a matter of great interest to everybody living in the vicinity of the Sacramento River.

MR. TINNIN. As far as the resolution is concerned, I have no objections to it. But the preample does not state the facts. Now, every man of intelligence knows that the navigation of this stream is just as open as it was fifteen years ago.

MR. REED. You are mistaken entirely.

MR. TINNIN. No, sir. The reason why steamers are not plying on the Sacramento to-day, is that the railroad company controls most of the steamers, and they have a monopoly, and have drawn the steamers off. As far as the resolution goes, I will favor the resolution, but I certainly object to the preamble.

THE PRESIDENT. The question is upon striking out the preamble. Lost.

MR. GLASCOCK. Mr. President: I know that every statement made in that document is true. I heartily concur in every word that Mr. Reed has said in support of the resolution, and I hope it will be adopted.

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

REPORTS.

MR. HILBORN. Mr. President: Your Committee on Mileage and Contingent Expenses, to whom was referred the resolution of Judge Hager, authorizing the Committee on Revenue and Adjustment to appoint a clerk, herewith report the same back, and recommend that it be adopted.

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

MR. AYERS. Mr. President: Your Committee on Reporting and Printing beg leave to report as correctly engrossed: "Amendment number five hundred and fourteen—Water and Water Rights; Amendment number five hundred and twenty-three—Education; Amendment number five hundred and fifteen—State Institutions; Amendment number one hundred and seventy-eight—Harbors, Tide Water, and Navigable Streams; Amendment number five hundred and four—Suffrage."

SPECIAL ORDER—REPORTING DEBATES.

MR. HEISKELL. Mr. President: I call for the special order.

THE PRESIDENT. The Secretary will read the resolution offered by the gentleman from Stanislaus, and made the special order for this hour.

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THE SECRETARY read:

WHEREAS, E. B. Willis and P. K. Stockton have in their possession a full and complete stenographic report of the debates and proceedings of this Convention; and, whereas, it may be advisable, in the near future, for the State to possess itself of said report; and, whereas, in such an event, the lack of an official sanction by this body of said report would greatly impair its value and usefulness; therefore be it

Resolved, That the said E. B. Willis and P. K. Stockton be and they are hereby declared the official reporters of the Constitutional Convention of California, held in the years eighteen hundred and seventy-eight and eighteen hundred and seventy-nine, subject to the following restrictions: First, in the event of the State desiring to possess itself of a long-hand copy of said report, it shall be the duty of the said Willis and Stockton, jointly or severally, to furnish the same to the State, and to receive therefor a compensation which shall not exceed ten dollars per day each for the time spent in taking said report, and twenty cents per folio for transcribing the same into long-hand. It shall be the further duty of the said Willis and Stockton, or either of them, in the event of the publication of said report by the State, to furnish each member of this Convention, if desired, a long-hand copy of his speeches and propositions, for revision and correction, before being submitted for publication. Unless the State shall hereafter purchase the said report of the proceedings and debates of this Convention, as above provided, no claim of the said Willis and Stockton, or of either of them, against the State for services already rendered in this Convention, shall have any binding effect or be other than void.

REMARKS OF MR. O'SULLIVAN.

MR. O'SULLIVAN. Mr. President and Gentlemen of the Convention: I desire to place my name squarely on record on this subject, because I am utterly opposed to the proposition of recognizing any persons as official reporters of this Convention. Such a recognition at this day and date will be fully equivalent to an election, which was voted down more than once by a large majority of this Convention at the commencement of the session. The proposition was then voted down because the estimated expense was considered disproportionate to the benefit likely to be derived by the State from having the speeches of members printed. I am opposed to saddling any expense upon the State now for any such purpose, as I was at first. I am opposed to the election of official reporters of this body, so that said reporters can go before the next Legislature with such an indorsement, which will be equivalent to an allowance of a claim for services. It will be a positive stultification of its previous action for this Convention to do it now, and what guarantee have we that these reporters are keeping a correct report of the proceedings. Let us not do this thing in the dark. Let us not spend the last days of the session in taking such action on suspicious cases such as this is, that will involve an enormous expense to the State. By doing so we will be imitating the reprehensible conduct of the last days of an expiring Legislature in rushing through enormous steals in disguise.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. President: I believe that a full and complete report of the proceedings and debates of everything that has occurred in this Convention ought to be preserved for the future. We have, in the course of our session, advocated some new principles and ideas of constitutional law. As far as the State is now concerned, the people have received those ideas with prejudice, as they have been presented to them in a garbled and in a misrepresented shape. And if hereafter, when this Constitution shall be adopted; and if hereafter the members of this Convention are taken to task by the people of the State for their action here, they ought to be enabled to point to the record and to show the reasons which actuated them in that action. This Convention has labored from the outset, throughout the entire session, with disadvantages of every kind. Nearly all the great organs of the State have been against us, and some of them have resorted to ridicule and falsehood as regards our conduct. I wish, sir, in the future to be able to vindicate my actions upon this floor. I do not wish in the years to come, when questions shall arise before the people, that anybody shall question my action, shall impugn my motives, by drawing upon me a file of the papers which have kept garbled accounts of the proceedings of this Convention. I wish to fall back upon the record, and upon that record I wish to stand. Mr. President, I hope that this resolution will pass. It does not follow necessarily that the State will carry out the exact implication of this resolution. I wish it to be in the power of the State—and I want to fix it here—for the State to acquire a longhand report of all the proceedings of this Convention. I consider the resolution sufficiently guarded. The State may take it or not, as it pleases; and the terms are the ordinary terms of the profession. Now, sir, suppose that we do not adopt this resolution; suppose we adjourn without doing anything in this matter; the gentlemen who have kept a copy of the notes of the proceedings of this Convention will own them as private property; and should this Constitution be adopted, the State will be required to carry out the comity that has existed between States in regard to Constitutional Convention proceedings, and exchange reports with them; and these gentlemen will have a corner upon the proceedings of this Convention, and may charge whatever they please. By adopting this resolution, which is acquiesced in by the gentlemen who have kept these notes, we shall secure ourselves against future speculation; and in that view, I consider the measure an economical one.

SPEECH OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: I have heard a great deal of abuse of what the Legislature has done, and a majority of this Convention has, undoubtedly assumed that if they had been in the Legislature these great wrongs would never have been perpetrated. We are now, as the time passes for this session to draw to a close, being placed under the same peculiar temptations and conditions under which the Legislature often has acted; and that is, in the presence of these gentlemen, who are said to be the official reporters, we are called upon to declare that they are the official reporters of this Convention, and the question of courtesy is involved. My judgment is that a bigger job was never attempted by the State Legislature than the job for which we are attempting to lay the foundation. On three several occasions, by a direct vote of this Convention—and against my vote, I being in the minority—this Convention resolved that we would have no official reporters; that this State ought not to be put to that expense. Having resolved that, we have proceeded for about five months without official reporters. If we were to have had them, then I would like to have had the benefit of their reports; I would like to have known that the officers were sworn; that there was a responsibility, and for favoritism of one kind and another there should be some accountability. This is simply a private report, and we are asked, at the end of the session, to elect the gentlemen from the beginning of the session, leaving it to the Legislature. Why, that could have been done in the beginning, by leaving it to the Legislature to pay them, if there was no fund provided. But we are now adopting a declaration that these are the official reporters of this Convention. If we declare that they are, we will declare a falsehood. It is not true. They are no more official reporters than any other gentlemen whom the courtesy of the Convention has been extended to and given a seat here. I am perfectly aware, sir, that a document has been circulated here, signed by a majority of this Convention, and the subscription was from ten dollars to twenty dollars, averaging from fifteen hundred dollars to two thousand dollars, which, perhaps, made the gentlemen feel that if they were not officials they ought to be.

Now, sir, if anybody wants his speech reported let him pay for it, and make others pay for theirs. And I imagine the pay of the gentlemen will amount to a good deal more than the pay of delegates on this floor. I suppose it is safe to say that at twenty cents per folio the pay for speeches will amount to five or six hundred dollars, besides what was contributed by some of the members. Now, what is this proposition? "A per diem," says the resolution, "of ten dollars a day from the beginning of the session." For one hundred and fifty days that would be three thousand dollars for per diem of two men who are not officers of the Convention. Then, at twenty cents per folio, it lays the foundation for a raid upon the State Treasury to the extent of fifty thousand to seventy-five thousand dollars. And for what? For official reporters, gentlemen say, but I deny the "whereas." "Whereas, these gentlemen have in their possession a full and complete stenographic report of the debates and proceedings—." Where is the proof of it? Not one member of this Convention can say he knows it, and several can say we know it is not true. If gentlemen will propose these resolutions they must take the answer to them. I say from my own knowledge, and I have heard it from other delegates, that as to these reports, whatever may be the cause--whether they cannot hear, or what—that they scarcely furnish the framework of a speech. I would about as soon try to write out my speech from memory as from that framework. The only instance in which they purported to make a report of what I said—about ten minutes—there was not three sentences in it that I had used. The effect of this is about this—this revision: after a man gets his speech, if it does not suit him, he will write a speech that will suit him. If he cannot write he will call in some friend able to write it for him, and the speeches which would go into the official report would not be the speeches made here, but the speeches that gentlemen would have prepared for them by some friend or some clerk. And these speeches would be paid for by the State of California at twenty cents per folio. And even these unfortunate gentlemen who have already paid their twenty cents per folio—and I can name some who have paid a good deal—the State would pay the twenty cents for the same speeches over again. Now, sir, I trust that no such action will be taken by this Convention. It ought to be utterly silent upon the subject. Let the Legislature buy it if they will. It is introduced here and we are asked to give it sanction. We are asked to become *particeps criminis* in a job, the magnitude of which we know not.

Mr. HEISKELL. If the gentleman says there is any job in the resolution he states a falsehood.

SPEECH OF MR. VAN VOORHIES.

MR. VAN VOORHIES. Mr. President: I have a sort of an idea that my colleague, Mr. McCallum, is right. I don't think his speeches ought to be paid for. [Laughter.] These young gentlemen have staid here as long as we have, and have listened to (I suppose they have—if they have they have done more than anybody else in the world has) all the speeches made in this Convention. I say, therefore, we ought to adopt this resolution for them. Of course I do not mean that all the speeches that have been made ought to be published, because that would ruin the whole affair. [Laughter.] I think the Constitution would not be adopted. [Laughter.] But I believe most of the members have been earnestly and honestly trying to carry out what their constituents told them to do. [Laughter.] Now, Mr. President, there is one thing I want to say now. I have been told ever since the commencement of the session, that the eyes of the people of this State were upon me. I wish they would take them off. [Laughter.] The eyes of the people are on me. Am I not one of the people? I am an integral portion of the people, and whenever the people tell me that I have not done right I will tell the people to go to the devil, and not come to me about it. Now, these gentlemen have stayed here during the whole session; they have worked for us; they have reported our speeches—everybody's except mine; I didn't want them to report mine. [Laughter.] These young men have stayed here day after day, and worked for you, and why should they not receive this much consideration at our hands? They have worked laboriously, and I have no doubt honestly, and why should they not be sustained? I trust the resolution will pass.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope, as I did at the beginning of this Convention, that we shall take some steps to provide for an official report of the proceedings of this Convention, in the event that the Legislature wishes to publish them. I do not believe the importance of it can be overestimated. And, sir, there is to be found plenty of evi-

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dence that the official reports of a Convention of this kind are of the utmost importance. We, sir, have had here a Convention the like of which has never assembled before. I think I shall be borne out by the great majority of this body, that we have had here a Convention assembled at a time such as no Convention ever yet assembled in. Questions that have not before agitated the public mind, have been forced upon the attention of this Convention. Some of these ideas have been repudiated, as they undoubtedly ought to be. But it is well to know what was in the minds of the people who are sent here, no matter what those ideas are. Now, sir, in regard to the opinions of those who are well posted upon this subject, I desire to read for a moment from "Jameson on Constitutional Conventions," a gentleman who is perhaps the best authority upon this particular subject of any man in the United States. Now he says this, in regard to providing official reports of the proceedings:

"It would be a most niggardly policy which should refuse the expenditure necessary to the preservation of most full and accurate reports of its debates and proceedings. Upon this subject, however, there has been no slight difference of views in different Conventions. In many of the States volumes have been published containing both the Journal and the debates of all their Conventions. In others the subject seems not to have been regarded as of any consequence whatever; and what little has been preserved has been owing to the private enterprise of the newspaper press. The result is that the memorials of the most important public bodies ever assembled in those States are often very meager, and more often confused and inaccurate. Such a policy is 'penny wise and pound foolish.' In after years, when it has become impossible to replace what has been lost, more enlightened public opinion commonly finds cause to regret a paltry economy which deprives history of its most important data. It should be remembered that our Conventions lay the foundations of States, many of which are to rival the greatness and glory of Rome, of England, and of France. In a hundred years from now what treasures would they not expend could they purchase therewith complete copies of their early Constitutional records—documents standing to their several organizations in the same relation as would the discussion of those ancient sages who framed the Twelve Tables of the Roman law to the Republic of Rome."

That, sir, is the opinion of a man who is probably the best judge in this country upon such matters. Now, sir, the question here is not whether we shall compel the Legislature to pay for these reports. The matter as stated by the gentleman from San Francisco, Mr. O'Sullivan, that it would be an attempt to put a large additional expense upon the State, is certainly not correctly stated. No additional expense will be incurred by reason of the passage of this resolution. It is simply stating that these gentlemen are the official reporters of this Convention. It simply binds them to do certain things in case the Legislature desires to publish these debates. Now, sir, what would have been the condition of these reports if these gentlemen had not stayed here and taken down the proceedings. The result would have been they would have been here for somebody else; they would have been here for some newspaper, the publishers of which desired to publish some portions of the proceedings of the Convention; and the proceedings would have been published in the interest of the sentiments of the paper publishing them, and our only recourse to find out what had been done, what was the intention of the Convention upon any subject, would be to refer to the reports as published by those newspapers, and instead of having a truthful report of the proceedings and doings of this Convention, we should have had a report of what some newspapers wished had been done, or as near to what they wished as they could warp the proceedings to fit. Now, sir, in contradistinction from that, these gentlemen have remained here at their posts, taking down these speeches during the whole time, and they have, and can furnish a verbatim report of everything that has transpired in this Convention, from the very beginning until now, and they will have such report until the end. This resolution only asks us to declare these the official reports. Now, if the Legislature shall desire to publish these reports at any time, these gentlemen are prohibited from receiving more than the regular per diem that is established by law for phonographic reporters all over the country, and when they write them out, they shall not receive in excess of the regular price per folio. And that is as much as we should say. Then if the Legislature in its wisdom should see fit to publish these debates, they must furnish the copy at the regular standard rates. I hope that this Convention will put the stamp of its approval upon these reports by declaring these gentlemen the official reporters of this Convention, for if we do less than that we shall not do justice to them, and we shall do a gross injustice, not only to ourselves, but to the people of this State.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. President: I trust this resolution will not pass. It is the first instance in my life that I have ever seen an officer—an attempt to create an officer after the work was done. This Convention decided in the early part of the session that we would not have any official reporter; and at this day and age gentlemen come up here and introduce a resolution, and propose to say that what these gentlemen have done is official, and that it is correct—something about which they know nothing. How can any gentleman give his consent to vote that these reports are correct, when you know nothing about it? They have acted without bonds, without an oath, without any responsibility to anybody, no more than any other reporter in the country; and now they get up here and propose to say, after the work is done, that it is correct and official. I shall not vote for that proposition, and I hope the Convention will not do so. I know nothing about either of the young gentlemen who are employed reporting here. I presume they are paid or they would not be here. I know nothing about it, and care nothing about it, for it is none of my business; but my experience is, that gentlemen do not sit day after day and perform labor when they are not paid for it. I trust this resolution will be voted down. If the Legislature wants this thing, they can buy it. If not, they can let it go. As far as I am individually concerned, I would not give a flip of a penny for it. With a few honorable exceptions, the speeches that have been made are clap-trap and humbug, and I don't know of a man who would read the proceedings for less than ten thousand dollars.

MR. TOWNSEND. Have you contributed anything towards it?

MR. TULLY. No, sir. I say, if you go to employ a man to read these proceedings, he would charge ten thousand dollars to do it.

MR. WILSON, of First District. Do you think he would survive it?

MR. TULLY. I don't believe any man would come out with a sound clear head after he had read it through. Now, I hope that this thing will be voted down, because—as far as the author of the resolution is concerned, I attribute nothing to him. I know him to be an honorable man. But there is a nigger in the bush somewhere. It is an attempt to stamp this thing with an official character that will give somebody the right to go before the Legislature and demand an appropriation to pay for it. If it is not so, why do they want us to declare them official? Is it for mere idle glory? Why do these gentlemen care anything about it? No, sir; it is a scheme, and they desire to be placed in a position that will enable them to demand money from the State. I hope it will be voted down.

MR. BARBOUR. Mr. President: This, sir, is a most extraordinary proposition that is brought in here, and if there was no other reason, it is reason enough to vote against it, that I do not understand it, and I doubt if any member of this Convention understands it, and I most seriously doubt whether the people will not understand it to be forty or fifty niggers in the fence. Now, sir, this reporting was entered upon as a private speculation, and I am in favor of allowing it to remain a private speculation. If the gentlemen desire a certificate that they have sat here and taken notes, I am content to give it to them, but I am not willing to brand their work as official and correct, even though there is a proposition there at the tail end that gentlemen can have their speeches revised: Now, sir, how do I know they are correct? What is the beauty of any official reports, that are ever offered to the world? Why, sir, it is that at the time, then and there, you have an opportunity to meet it, to answer it, and to state whether it is correct or not. There is not a set of debates in the country where the speeches were not written out and submitted to the members and inspected by them and verified in some way as correct. Now, sir, I do not know exactly whether I am correct or not, but I am informed by those who do the business, that after these reports get cold, no one but the reporter is able to verify them. My experience in Courts is much to the same effect, that those reports that are brought in there that have not been transcribed are very difficult to read, even by the authors themselves, and it is difficult even for them to determine exactly what was said.

MR. REYNOLDS. Will the gentleman allow me to ask him a question? When testimony is taken by the reporters in Courts, is it not taken as correct every day in the week, and every week in the year, all over the State? Is it not the official record?

MR. BARBOUR. It is in the Courts. If the gentlemen want to have us put in evidence that they have sat here and taken these reports, I have said that they have. They have been here making reports, but, sir, I do not propose to say whether it is correct. I believe that this is intended to be construed into an indorsement or direction to the State to purchase these reports. I believe that the people will so construe it. I have said that it was started as a private speculation, and if the gentlemen can sell the reports to the Legislature I have no objection. I know that it is a physical impossibility for the one hundred and fifty-two members of this Convention ever to have an opportunity to revise at all, and we must all take our chances in that event, the one with the other. I want nothing better, nor nothing less. But, sir, I will not consent that it shall be published to the world that I said so and so here, and when I declare that I never uttered such language, they can turn to me and say that the report is official. I do not know that it is correct. I have no opportunity to examine it.

SPEECH OF MR. HEISKELL.

MR. HEISKELL. Mr. President: The Legislature that passed the Act calling this Convention, anticipated official reporters, and provided that they should have them if they saw fit to do so. Now, sir, as regards the correctness of these reports, we have just as much knowledge that they are correct as we would have if they had been sworn in as reporters. These gentlemen are ready to take an oath that they are correct. Now, the gentleman from Alameda has denounced this as a job, but he has not produced a scintilla of proof that it is a job. He had this resolution laying before him and did not point out wherein there is any chance for a job, he could not do it. He makes an assertion that is false, and he cannot back it up with any facts, even with the resolution before him.

MR. McCALLUM. I said it laid the foundation.

MR. HEISKELL. Where does it lay the foundation? You are asserting what you cannot prove, because it is not true. You make that assertion with the document lying before you. Newspapers are conducted by private enterprise, and I have no personal grievances against them. Now, sir, this does not bind the State to pay one cent; the State is protected in the last clause of this resolution. The gentleman still denounces it as a job, and I challenge him, or any other gentleman, to point out wherein there is any possibility of a job, or where anything is concealed.

REMARKS OF MR. STUART.

MR. STUART. Mr. President: I am in favor of the resolution, but would like to have an amendment adopted striking out the clause allowing revision of speeches. I think I see in the near future a Victor Hugo in this State. He will want to write a *Les Miscrables*, and why not

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have the whole thing and take every word that has been said here by each individual, and let it go out as a volume, the like of which the world has never seen or read before. If the gentleman from Stanislaus would agree to an amendment striking out the revision, I think the Convention should unanimously support the resolution, and place it so that the Legislature can recompense these gentlemen for their daily labor and toil, both day and night, as long as they have been here.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: I wish to explain the vote I shall cast upon this resolution. I shall vote for it because I think it is a protection to the members. and a restriction upon the Legislature. Certainly we cannot prevent these speeches, or the record made here, from being published. These gentlemen can publish them whether the Legislature authorizes them to do so or not, and if there is not something done by this body, the Legislature can vote as much as they please. This is a restriction upon the Legislature, that these reporters shall not have more than a certain amount. Without saying anything here, the Legislature has full power in the matter, and can pay as much as it pleases. But by making them official reporters, you make them officers of this Convention, and limit the amount which they may receive. It seems to me that the Legislature would not have power to change that. These are the reasons why I favor the resolution.

REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. President: I shall vote for this resolution because I believe the State will need these records; I think it is but a simple act of justice. Now, I presume if the gentleman fron San Francisco, Mr. Barbour, had told these gentlemen that he would give them a certificate recognizing the fact that they were here, that would have settled the question, and they would not have presented this resolution, but he did not announce it in time. Now, I can hardly understand the opposition here, especially that of Mr. McCallum, who has probably made more speeches here than any other gentleman on this floor; I can only account for it on the ground that his speeches don't look as well on paper as he thought they would, hence he is opposed to their being preserved—and I don't wonder at it [laughter], looking at it in that light. And, sir, in regard to the correctness of these reports, I think, perhaps, in a good many cases, it would be more complimentary to members if they were not correctly reported; perhaps their speeches would read better. But, sir, it is a fact that there have been many able debates here. There have been questions of great importance brought before this Convention, such propositions as were never before brought before any deliberative body, and they have been argued by men who are able, intelligent, eloquent, and honest, and these debates are well worth preserving. I shall vote for the resolution.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I hope this resolution will pass. As their merits seem to have been pretty thoroughly discussed, I will content myself with remarking that the opposition to them here reminds me of what I have heard of the Southern Pacific Railroad. It is said to be one of the sinuosities of that institution, that in overcoming an otherwise insurmountable mountain which lay in its track, it winds around in a circle, enters a tunnel, doubles on its track, and emerges on the other side and goes on its way. If these debates were written out and published, might they not show something of the same sort in the record of some gentlemen who oppose these resolutions? And is it not just possible that this fact explains that opposition? I can recollect much in the course of gentlemen who distort facts and pervert the meaning of these resolutions, that looks like doubling on their tracks—like going into their holes to come out on the other side.

Now, the gentleman from San Francisco, Mr. Barbour, questions the integrity of these reports; says we do not know anything about their correctness. Now, sir, the world has come to consider the report of an official short-hand reporter more correct than the memory of a speaker. We see that illustrated every day, in every Court in the State. They choose a short-hand writer, and he takes notes of the testimony of witnesses, writes it out afterwards, and the Court assumes that these notes are correct, without ever questioning the witnesses, or referring to them again. Why should we not be willing to do so? I am willing, as far as I am concerned, to trust the reporters' notes. I know that a short-hand reporter is but a machine, and it is impossible for him to write down what he does not hear. Now, I do not want to correct or change a single speech I have made. I am willing that all my muddy ideas and stumbling English shall go into the record just as the reporters hear it. If I have gone into any holes and come out on the other side, or doubled upon my track, I am willing that the notes shall show it. If other gentlemen cannot endure the ordeal, so much the worse for them. Let us regard that as an explanation of their opposition to having this record made.

MR. CONDON. Mr. Chairman: I wish, sir, to condemn the practice of introducing resolutions to make reports official reports of a Constitutional Convention as most dangerous, and this proposition which has been introduced here is no exception. Already, sir, the time occupied by discussions upon this question has occupied the time of this Convention to an unlimited extent. It is evident, sir, to my mind, that every gentleman within the hearing of my voice has been sufficiently informed as to its character, as to its true inwardness, and ready, no doubt, to vote, and I trust they will vote against it. Consequently, sir, in view of that fact, I move the resolution be laid upon the table.

THE CHAIR. The question is on the motion to lay upon the table.

The ayes and noes were demanded by Messrs. Reynolds, Huestis, Stedman, Heiskell, and Blackmer.

The roll was called, and the motion to lay on the table prevailed by the following vote:

AYES.

Barbour,	Harrison,	Nelson,
Bell,	Herold,	Neunaber,
Biggs,	Hitchcock,	Ohleyer,
Burt,	Howard, of Mariposa,	O'Sullivan,
Campbell,	Inman,	Porter,
Caples,	Joyce,	Prouty,
Casserly,	Kelley,	Rhodes,
Chapman,	Kenny,	Schomp,
Charles,	Lampson,	Smith, of San Francisco.
Condon,	Larkin,	Soule,
Crouch,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Doyle,	Lewis,	Thompson,
Dunlap,	Mansfield,	Tully,
Evey,	Martin, of Santa Cruz,	Tuttle,
Freud,	McCallum,	Walker, of Marin,
Garvey,	Mills,	Waters,
Gorman,	Morse,	Webster,
Graves,	Murphy,	Weller—58.
Hall,		

NOES.

Andrews,	Huestis,	Shafter,
Ayers,	Hunter,	Shurtleff,
Barry,	Johnson,	Smith, of 4th District,
Barton,	Jones,	Stedman,
Blackmer,	McComas,	Stevenson,
Brown,	McConnell,	Stuart,
Davis,	McCoy,	Turner,
Dowling,	McFarland,	Vacquerel,
Eagon,	McNutt,	Van Dyke,
Edgerton,	Miller,	Van Voorhies,
Estey,	Moreland,	Wellin,
Filcher,	Nason,	West,
Glascock,	Noel,	Wickes,
Grace,	Reed,	White,
Hager,	Reynolds,	Wilson, of Tehama,
Harvey,	Ringgold,	Wilson, of 1st District,
Heiskell,	Rolfe,	Wyatt,
Herrington,	Schell,	Mr. President—55.
Hilborn,		

PAIRED—Mr. Holmes, aye, with Mr. Townsend, no.

LEGISLATIVE DEPARTMENT—ELEEMOSYNARY INSTITUTIONS.

THE CHAIR. Section twenty-two is before the Convention.

MR. VACQUEREL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert in line nineteen, after the words 'other control," the following: 'provided further, that those institutions receiving State aid shall receive all orphans, half orphans, or abandoned children, or aged persons in indigent circumstances, directed to them by the State, and in case of a refusal on the part of any such institutions to receive such persons, the aid granted shall be forfeited.'"

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: That question was fully discussed before the Committee of the Whole, and there was such a heavy vote against it, that it is not necessary to argue it at length now. Very little need be said upon it. This is a matter that is perfectly safe to leave to the discretion of these institutions, as they only receive pay for what they support. I can see no sort of reason for imposing any such conditions upon them. They ought to be allowed to decide whom they will receive, and under what circumstances they will receive them.

MR. WELLIN. Mr. President: I hope this amendment will be voted down. It will simply put a whole poor house into an orphan asylum. It will take the inmates of the County Hospitals and transfer them, disease and all, into the asylums, simply because you give them a few dollars every year out of the State treasury.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Vacquerel, Stuart, Smith of Santa Clara, Herrington, and Gorman.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Hunter,	Stevenson,
Blackmer,	Jones,	Stuart,
Burt,	Kelley,	Tinnin,
Evey,	Lavigne,	Tuttle,
Filcher,	Lewis,	Vacquerel,
Hall,	Moreland,	West,
Hitchcock,	Reynolds,	Wilson, of Tehama—23.
Howard, of Mariposa,	Schomp,	

NOES.

Ayers,	Caples,	Edgerton,
Barbour,	Casserly,	Estey,
Barry,	Chapman,	Freud,
Barton,	Condon,	Garvey,
Beerstecher,	Crouch,	Glascock,
Belcher,	Davis,	Gorman,
Bell,	Dean,	Graves,
Biggs,	Dowling,	Hager,
Boucher,	Doyle,	Harrison,
Brown,	Dunlap,	Harvey,
Campbell,	Eagon,	Heiskell,

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Herold,	Mills,	Smith, of San Francisco,
Herrington,	Moffat,	Soule,
Hilborn,	Morse,	Stedman,
Huestis,	Murphy,	Swing,
Inman,	Nason,	Thompson,
Johnson,	Nelson,	Townsend,
Joyce,	Neunaber,	Tully,
Kenny,	Noel,	Turner,
Lampson,	Ohleyer,	Van Dyke,
Larkin,	O'Sullivan,	VanVoorhies,
Larue,	Porter,	Walker, of Marin,
Mansfield,	Prouty,	Waters,
Martin, of Santa Cruz,	Reed,	Webster,
McCallum,	Rhodes,	Weller,
McComas,	Rolfe,	Wellin,
McConnell,	Schell,	Wickes,
McCoy,	Shafter,	White,
McFarland,	Shurtleff,	Wilson, of 1st District,
McNutt,	Smith, of Santa Clara,	Wyatt,
Miller,	Smith, of 4th District,	Mr. President—93.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Dunlap, West, White, and Smith, of Santa Clara.

THE CHAIR. The question is: Shall the main question be now put? Carried.

THE CHAIR. The question is: Shall the article be adopted as a part of the Constitution? The Secretary will call the roll.

The roll was called, and the article adopted as part of the Constitution by the following vote:

AYES.

Andrews,	Harvey,	O'Sullivan,
Ayers,	Heiskell,	Rhodes,
Barbour,	Herold,	Ringgold,
Barry,	Herrington,	Rolfe,
Barton,	Howard, of Mariposa,	Schell,
Beerstecher,	Huestis,	Shafter,
Belcher,	Hunter,	Shurtleff,
Bell,	Inman,	Smith, of Santa Clara,
Biggs,	Johnson,	Smith, of 4th District,
Blackmer,	Joyce,	Smith, of San Francisco,
Boucher,	Kenny,	Soule,
Brown,	Lampson,	Stedman,
Burt,	Larkin,	Stevenson,
Campbell,	Larue,	Stuart,
Caples,	Lavigne,	Swing,
Chapman,	Mansfield,	Thompson,
Charles,	Martin, of Santa Cruz,	Townsend,
Condon,	McCallum,	Tully,
Crouch,	McComas,	Tuttle,
Davis,	McConnell,	Vacquerel,
Dean,	McCoy,	Van Dyke,
Doyle,	McNutt,	Walker, of Marin,
Dunlap,	Miller,	Waters,
Estey,	Mills,	Webster,
Evey,	Moffat,	Weller,
Filcher,	Morse,	Wellin,
Freud,	Murphy,	Wickes,
Garvey,	Nason,	White,
Gorman,	Nelson,	Wilson, of Tehama,
Grace,	Neunaber,	Wyatt,
Hager,	Noel,	Mr. President—95.
Harrison,	Ohleyer,	

NOES.

Casserly,	Hughey,	Prouty,
Eagon,	Jones,	Reed,
Edgerton,	Kelley,	Reynolds,
Glascock,	Lewis,	Schomp,
Graves,	McFarland,	Tinnin,
Hall,	Moreland,	Turner,
Hitchcock,	Porter,	Wilson of First Dist.—21.

The article was referred to the Committee on Revision and Adjustment.

FUTURE AMENDMENTS.

THE CHAIR. The next business in order is the consideration of the article on future amendments, on second reading. The Secretary will read.

THE SECRETARY read the article:

ARTICLE —.

AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two Houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of said Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more than one amendment be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that they can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the electors qualified to vote for members of the Legislature voting therefor, such amendment or amendments shall become a part of this Constitution.

SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall think it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at said election on the proposition for a Convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. Said Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, which shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election, at such place as the Legislature may direct. The Constitution that may be agreed upon by such Convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

MR. BLACKMER. Mr. President: I ask permission to have the Secretary make a correction in the sixth line, by striking out the word "and" where it first occurs.

MR. McCALLUM. I offer an amendment.

THE SECRETARY read:

"Strike out, in line two, section two, 'on the proposition for a Convention.'"

MR. McCALLUM. My proposition is to restore it as it was in the old Constitution. Under this section, if one hundred and fifty thousand votes are cast, five thousand might order a Convention called. I shall not occupy time upon this question, but call for the ayes and noes.

MR. HAGER. Mr. President: That ought to be adopted; otherwise, if one hundred men vote for calling a Convention, and nobody votes against it, a Convention would be called. It ought to be a majority of all the votes cast at a general election.

MR. BLACKMER. Mr. President: I hope this amendment will not prevail. This matter was discussed in Committee of the Whole. I see no reason why we should make an exception in this matter. When a man runs for office, or when any other proposition is submitted, the votes for or against determine the result. So it ought to be here.

MR. WHITE. Mr. President: I trust that it will remain as it is. I don't see why it cannot be submitted like any other proposition.

MR. CROSS. Mr. President: I think this section is right as it is. A majority of all the votes cast is enough.

THE CHAIR. The question is on the motion to strike out.

The ayes and noes were demanded by Messrs. McCallum, Brown, Grace, Belcher, and Gorman.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Herrington,	Reynolds,
Brown,	Howard, of Mariposa,	Schell,
Caples,	Huestis,	Swenson,
Doyle,	Hughey,	Townsend,
Eagon,	Inman,	Tully,
Edgerton,	Lampson,	Turner,
Filcher,	Mansfield,	Tuttle,
Freud,	Martin, of Santa Cruz,	Vacquerel,
Garvey,	McCallum,	Van Dyke,
Glascock,	Miller,	Walker, of Tuolumne,
Gorman,	Mills,	Waters,
Graves,	Morse,	Webster,
Hager,	Murphy,	Wilson, of Tehama,
Hall,	Nason,	Wilson, of 1st Dist.—44.
Heiskell,	Ohleyer,	

NOES.

Andrews,	Hitchcock,	Ringgold,
Barry,	Hunter,	Rolfe,
Barton,	Johnson,	Schomp,
Beerstecher,	Jones,	Shafter,
Bell,	Kelley,	Shurtleff,
Biggs,	Kenny,	Smith, of Santa Clara,
Blackmer,	Larue,	Smith, of 4th District,
Boucher,	Lavigne,	Smith, of San Francisco,
Burt,	Lewis,	Soule,
Campbell,	McComas,	Stedman,
Casserly,	McConnell,	Stevenson,
Chapman,	McCoy,	Stuart,
Charles,	McNutt,	Thompson,
Condon,	Moffat,	Tinnin,
Davis,	Moreland,	Walker, of Marin,
Dowling,	Neunaber,	Weller,
Dunlap,	Noel,	Wellin,
Evey,	O'Sullivan,	West,
Grace,	Porter,	Wickes,
Harrison,	Prouty,	White,
Harvey,	Reed,	Wyatt,
Herold,	Rhodes,	Mr. President—66.

THE CHAIR. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

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AYES.

Andrews,	Herold,	Reed,
Ayers,	Herrington,	Rhodes,
Barbour,	Hitchcock,	Ringgold,
Barton,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Schomp,
Belcher,	Hughey,	Shafter,
Bell,	Hunter,	Shurtleff,
Biggs,	Inman,	Smith, of Santa Clara,
Blackmer,	Johnson,	Smith, of 4th District,
Boucher,	Jones,	Smith, of San Francisco,
Brown,	Kenny,	Soule,
Burt,	Lampson,	Stedman,
Campbell,	Larkin,	Stevenson,
Caples,	Larue,	Stuart,
Chapman,	Lavigne,	Swing,
Charles,	Lewis,	Thompson,
Condon,	Mansfield,	Tinnin,
Crouch,	Martin, of Santa Cruz,	Tully,
Davis,	McCallum,	Tuttle,
Dowling,	McComas,	Vacquerel,
Doyle,	McConnell,	Van Dyke,
Dunlap,	McNutt,	Walker, of Marin,
Estey,	Moffat,	Walker, of Tuolumne,
Evey,	Moreland,	Waters,
Filcher,	Morse,	Webster,
Freud,	Nason,	Weller,
Garvey,	Nelson,	Wellin,
Glascock,	Neunaber,	West,
Gorman,	Noel,	Wickes,
Grace,	Ohleyer,	White,
Hall,	O'Sullivan,	Wilson, of Tehama,
Harrison,	Porter,	Wyatt,
Harvey,	Prouty,	Mr. President—100.
Heiskell,		

NOES.

Casserly,	Kelley,	Schell,
Eagon,	Miller,	Swenson,
Edgerton,	Mills,	Turner,
Graves,	Murphy,	Wilson, 1st District—14.
Hager,	Reynolds,	

The article was referred to the Committee on Revision and Adjustment.

NOTICE.

MR. BARBOUR. Mr. President: I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the article on legislative department was adopted.

JUDICIAL DEPARTMENT.

THE CHAIR. The next business in order is the consideration of the article on judicial department on second reading.

MR. CAPLES. I move to dispense with the reading.

Lost.

THE SECRETARY read the article as follows:

ARTICLE —.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; provided, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and, also, all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; also, of all matters of probate, and, also, of divorce and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

SEC. 6. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; provided, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter; and, provided, that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; provided, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof

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filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court, at the same time, as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do. But a cause in the Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the Court, and sworn to try the cause.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may, at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; provided, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate, on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix, by law, the powers, duties, and responsibilities of Justices of the Peace; provided, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix, by law, the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix, by law, the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix, by law, their duties and compensation, which compensation shall not be increased or diminished during the term for which they shall have been elected. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable quarterly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, Nevada, and Sonoma, which shall receive four thousand dollars each.

SEC. 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

SEC. 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office.

SEC. 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

SEC. 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless they shall severally take and subscribe an oath, before the disbursing officer, that no cause in their respective Courts remains undecided that has been submitted for decision for the period of ninety days.

MR. WILSON, of First District. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert, after the word 'detainer,' in line six of section four, the words, 'and in proceedings in insolvency and in actions to prevent or abate a nuisance.'"

THE CHAIR. The question is on the adoption of that amendment. Adopted.

MR. INMAN. Mr. President: I offer a substitute for section two.

THE SECRETARY read:

"Substitute for section two of the article on judicial department: 'Section two. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, excepting such business as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment.'"

MR. INMAN. I don't want to steal any man's thunder. This is Mr. Laine's amendment. He is opposed to this double-headed Court.

MR. WILSON, of First District. Is it the amendment which he offered in Committee of the Whole?

MR. INMAN. I don't know.

THE CHAIR. It is the same amendment.

MR. BEERSTECHER. Mr. President: This matter having been before the Convention, and having been discussed for over a week, Mr. Laine having taken part and having introduced the same section, I believe we are ready to vote, and I therefore move the previous question.

THE CHAIR. Those seconding the previous question will rise.

Messrs. Dunlap, Condon, Huestis, Filcher, and Jones arose.

THE CHAIR. There is no second. The question is on the amendment.

MR. STEDMAN. Ayes and noes.

MR. EDGERTON. I offer an amendment.

THE CHAIR. The first question is on Mr. Inman's amendment.

The ayes and noes were demanded by Messrs. Stedman, Wyatt, Evey, Filcher, and Brown.

REMARKS OF MR. WILSON.

MR. WILSON. Mr. President: This amendment was presented in the Judiciary Committee, and voted down. The report came in to the Convention, and this amendment was offered again in Committee of the Whole, and either at that time, or in Convention it was discussed. Mr. Laine made an argument upon it, and I replied to it, and it was voted down. I hope it will be adopted, for it will destroy the system which has been presented here. It has not a particle of merit in it, and has been twice defeated.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I would be perfectly willing to take a Supreme Court in two departments, but I am utterly opposed to a system which places in the hands of one single Judge the power to shift himself from department to department as he pleases to decide cases; and I am opposed further to any Judge having power to assign cases to either department at the solicitation of friends, or by reason of any other influence brought to bear. Such a condition of things is now presented to us, and any gentleman who will read it will find himself at the mercy of one man in every case he carries into the Supreme Court. If he says a case shall go to one department, it goes there; if he says it shall be tried in bank, it is tried there. For the poor man who has neither friends nor influence, it requires the concurrence of four Judges to carry his case into bank, while one head can order the case of the man who is near the throne and judgment sent, to be heard before a full bench. The Chief Justice will have a dangerous power, and I care not how pure minded an Associate Justice may be, his opinions will be warped to some extent. It is human nature. It is useless to make words upon the subject, the facts must be apparent. I hope the amendment will be awarded a fair consideration.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. President: It seems to me this is a very late hour in the day to suggest these radical changes in a system which has been made harmonious throughout and acted upon. Now, this section occupied a very large share of the time in the deliberations of the Judiciary Committee, and it was adopted there by a very large majority. It came before the Committee of the Whole, and received a very decided indorsement there. It has passed through this Convention, and this amendment was thoroughly debated and voted down by a large majority. I am confident that this system will receive the approval of a very large majority of those who have practiced in the Supreme Court. It

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seems to me that after a system has been so thoroughly discussed as this has, and received the commendation of the bar of the State, who are supposed to act in the interest of their clients, and who know more about the business than anybody else, it is too late to seriously consider these radical changes.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: It was at such a late day when this report came into the Convention, that we had to take a great deal upon trust. I confess I did. I brought the matter before the Convention on its second reading, but at that time I had not fully investigated it. But, sir, every single moment I looked at it, and every reflection I gave it, only added to my distrust of the whole arrangement. Now, we are constantly lectured here, and constantly reminded by gentlemen that we of ordinary minds, upon these great constitutional questions—. But every well raised American has his ideas of Courts, and it is folly to thus fly in the face of well settled ideas as to what a Court should be, especially a Court of last resort. When they get a decision from that Court they must be satisfied, they must bow to it. Now, sir, that final judgment should not be merely the judgment of one department of that Court, but a judgment of the whole Court, and then the people will be satisfied; not alone that they must bow to it, but that they may be satisfied. Now, who can be satisfied with a judgment rendered by one of these departments? What lawyer will not tell his client that, if he could have got the case in bank, he would have won it.

MR. EDGERTON. Does not the gentleman know that the people of this State submitted to the judgment of these Judges for fifteen years, and that the two Judges were merely added in consideration of the amount of business?

MR. BARBOUR. That was the whole Court, not half of it. It is not the Court where less than half pronounce the judgment. I do not want any such provision in the Constitution, for we will not be able to get rid of the monster when we find that it does not work right. Now, sir, I say, if the great State of Pennsylvania can worry along with seven Judges and one Court, this State can. If the great State of Illinois, with four times the population of this State, can worry along with seven Judges and one Court, this State can do it.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: The question here is, whether we shall have a system of departments, or whether we shall continue the present system. Now, if the gentlemen wish to change this system, let them debate that question. If they wish to change the powers of the Chief Justice, let them debate that question; but not try to defeat this whole system by arguing propositions which are not before the Convention. This matter has been fully and fairly considered. It may be wrong. If it is, it has been made wrong after a long and thorough investigation by some of the ablest lawyers in the State of California. Now, a great deal has been said here about the powers of the Chief Justice. What is his power? Simply to distribute the business. He will have to act in accordance with the opinions of the other Justices. In order to wield this power he would have to know how certain Justices would decide on certain questions. He would have to know the principles involved in the case before him. So that it would be impossible, it seems to me, for him to get up any arrangement. It is impossible to carry out the different principles involved in the many cases brought before him. This system will certainly expedite business, and I cannot see where it confers any extraordinary power on the Chief Justice. It seems as though gentlemen would get tired fighting this by and by.

MR. BEERSTECHER. Mr. President: I desire to offer an amendment for Mr. Herrington, and ask leave to have it printed in the Journal.

So ordered.

Following is the amendment:

"The Supreme Court shall consist of six Justices, one of whom shall be elected by them to act as Chief Justice; and a record of such election shall be made in the minutes of the Court in bank. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated respectively, Department One and Department Two. The Justices shall assign themselves, by lot, to the departments, and a record of such assignment shall be made in the minutes of the Court in bank. The Justices shall be competent to sit in either department, and may interchange with each other when, from any cause, a Justice is incompetent to sit in a case pending in his department. Each of the departments shall have power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained, in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of two Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments. All cases involving the constitutionality of a law of this State as being in conflict with the Constitution thereof, shall be tried in bank. Cases in which any former decision of the Supreme Court is overruled by either department, shall be certified to the Court in bank, and be argued therein, and the decision of the Court in bank shall be final. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices so present do not concur in a judgment, then all the Justices qualified to sit in the cause, shall hear the argument, but to render a judgment, a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank, or in department, shall be given in writing, and the grounds of the decision shall be stated. The Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court in bank is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act. After the first assignment of the Justices to the departments, at the expiration of their respective terms, or in cases of vacancy, their successors shall be elected or appointed to fill the vacancy in the respective department."

NOTICE.

MR. McCALLUM. Mr. President: Notice is hereby given that I will, on to-morrow, or as soon thereafter as the motion can be heard, move to reconsider the vote by which the article on "future amendments" was adopted. Also, to reconsider the vote by which the Convention refused to strike out the words, "on the proposition for a Convention," in the fifth line, of section two.

ADJOURNMENT.

MR. STUART. Mr. President: In view of the custom which has long prevailed in this country, I now move that the Convention adjourn until Monday morning at half-past nine o'clock.

MR. McCALLUM. I move we adjourn.

Lost.

The motion to adjourn till Monday prevailed, and at five o'clock and thirty minutes P. M. the Convention stood adjourned.

ONE HUNDRED AND FIFTIETH DAY.

SACRAMENTO, Monday, February 24th, 1879.

The Convention met pursuant to adjournment at two o'clock P. M. President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Gregg,	Overton,
Berry,	Hager,	Reddy,
Cowden,	Hall,	Reed,
Cross,	Hilborn,	Schomp,
Dudley, of San Joaquin,	Inman,	Terry,
Estee,	Laine,	Thompson,
Estey,	Lewis,	Tinnin,
Fawcett,	McCoy,	Van Dyke,
Finney,	Mills,	Walker, of Marin.
Graves,	Noel,	

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITIONS.

MR. STEELE presented a petition relative to exemption of certain property from taxation.

Laid on the table.

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MR. MCFARLAND presented a petition from women of Sacramento for female suffrage.

Laid on the table.

QUESTION OF PRIVILEGE.

MR. MURPHY. Mr. President: I rise to a question of privilege. Some time ago when the article on land and homestead exemption was under consideration, I took occasion to make some remarks concerning a certain bill pending in Congress that was introduced by the Representative from the Third Congressional District of this State. The report of that bill was telegraphed to the California press as being in regard to the Klamath Indian Reservation. There is a Klamath Indian Reservation in the Third Congressional District which Mr. Luttrell represents, and I naturally supposed that the bill had reference to that. I have since learned upon good authority that the bill had reference to an Indian Reservation in Oregon. I know nothing of the merits of that bill, and consequently my strictures upon Mr. Luttrell and the bill were made under a false impression, and I take this opportunity to make the *amende honorable* to that gentleman, as I do not wish to misrepresent willfully any public servant.

TAXATION.

MR. JOHNSON. Mr. President: I ask leave to present an amendment to section one of the article on taxation, and also an additional section, and to have the same printed in the Journal.

THE PRESIDENT. The article is not before the Convention.

MR. JOHNSON. I ask leave of the Convention that they may be printed in the Journal out of order, for the information of the Convention.

THE PRESIDENT. If there be no objection it will be printed in the Journal.

The following are the sections:

"SEC. —. The value of the capital stock of a corporation shall be assessed in the county in which its principal place of business is located, and separately from all other property belonging thereto; and such stock shall be assessed at its market value when the assessment is made. The real property, and also the personal property other than the stock of such corporation, shall be assessed in the several counties respectively in which the same is situate. The value of such stock over and above the aggregate value of such real property, and the value of the personal property other than the stock, according to such assessment, shall be taxed in the county in which the principal place of business of such corporation is located; and the value of such real property, and the value of the personal property other than the stock, shall be taxed in the several counties respectively in which the same is situate. Such corporation shall furnish to the Assessor of the county in which its principal place of business is located a statement, under oath, of the aggregate value of its real property, and the value of the personal property other than the stock according to such assessment, within such time as may be provided by law; otherwise, the value of the capital stock of such corporation shall be taxed without deducting therefrom the assessed value of such real property, and the value of the personal property other than the stock. The shares of stock belonging to the stockholders in such corporation shall be exempt from taxation; provided, that the provisions of this section shall not apply to railroad corporations."

"SECTION 1. All property in this State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property' is hereby declared to include moneys, credits, franchises, and all other matters and things capable of private ownership, real, personal, and mixed; provided, that growing crops, and such property as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation; but property of any county or municipal corporation, not situated within the limits of such county or corporation, shall be liable to local taxation in the county where situated. The word 'property' shall also include stocks, but stocks shall be taxed as hereafter provided in this article. The Legislature may authorize a deduction of debts due to bona fide residents of this State from credits, except in the cases provided for by section four of this article."

REPORT.

MR. AYERS, from the Committee on Reporting and Printing, reported as correctly engrossed: Amendment number five hundred and twenty-one—City, County, and Township Organization; amendment number five hundred and thirty-four—Boundary; amendment number five hundred and thirty-six—Distribution of Powers; amendment number five hundred and twenty-four—Land and Homestead Exemption; amendment number five hundred and thirty-seven—State Indebtedness; amendment number five hundred and thirty-two—Schedule.

RESOLUTION—ADDRESS.

MR. HUESTIS. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the President of this Convention be requested to appoint, at an early day, a committee, to consist of one from each judicial district, whose duty it shall be to prepare an address to the people of this State, setting forth concisely the principal amendments proposed by this Convention to the present Constitution, and, as far as practicable, the reasons therefor; said address to be submitted to the Convention for action thereon before its promulgation.

MR. HUESTIS. Mr. President: I merely desire to say, in explanation, that I believe this resolution, or some resolution having the same object in view, is manifestly in the interest of the new Constitution, and that is the object I have in introducing it. I am not anxious to be appointed upon the committee, and would rather some other person would be designated in my place. I do not sympathize with the idea that was advanced here, that it would be an insult to the people of California; but, on the contrary, I think that they will appreciate any effort to assist them in the least in understanding the new Constitution. I believe there are manifest reasons for its adoption, and I ask that it be adopted.

MR. EDGERTON. Mr. President: It seems to me that this is the same subject, substantially, that was considered the other day, and disposed of adversely. It does not readily occur to me what benefit can result from a codification of this Constitution. It amounts to a sort of code commission in substance. I submit that nothing ought to be sent out that does not receive the sanction of this body as a Convention; that a compilation of this kind, if it is to be official, ought to go to the people having the sanction of this body in its official character. It seems to me that a work of that kind would detain this body much longer than gentlemen, I anticipate, desire to stay here. I therefore move to lay the resolution on the table.

The ayes and noes were demanded by Messrs. Huestis, Burt, Filcher, Campbell, and Hall.

The roll was called, and the motion to lay on the table was lost by the following vote:

AYES.

Boggs,	Heiskell,	Shafter,
Brown,	Herold,	Shoemaker,
Chapman,	Howard, of Los Angeles,	Soule,
Condon,	Keyes,	Stevenson,
Crouch,	Mansfield,	Sweasey,
Davis,	McNutt,	Townsend,
Dowling,	Miller,	Turner,
Doyle,	Morse,	Vacquerel,
Dunlap,	Murphy,	Walker, of Tuolumne,
Eagon,	Porter,	Waters,
Edgerton,	Pulliam,	Wickes,
Freeman,	Reynolds,	Winans,
Garvey,	Rolfe,	Mr. President—41.
Gorman,	Schell,	

NOES.

Andrews,	Harrison,	Moffat,
Ayers,	Harvey,	Moreland,
Barbour,	Herrington,	Nason,
Barry,	Holmes,	Nelson,
Barton,	Howard, of Mariposa,	Ohleyer,
Beerstecher,	Huestis,	O'Sullivan,
Belcher,	Hughey,	Prouty,
Bell,	Hunter,	Rhodes,
Biggs,	Johnson,	Ringgold,
Blackmer,	Jones,	Shurtleff,
Boucher,	Joyce,	Smith, of Santa Clara,
Burt,	Kelley,	Smith, of San Francisco,
Campbell,	Kenny,	Stedman,
Caples,	Kleine,	Steele,
Casserly,	Lampson,	Stuart,
Charles,	Larkin,	Swenson,
Dean,	Larue,	Tully,
Dudley, of Solano,	Lavigne,	Tuttle,
Evey,	Lindow,	Van Voorhies,
Farrell,	Martin, of Alameda,	Webster,
Filcher,	Martin, of Santa Cruz,	Wellin,
Freud,	McCallum,	West,
Glascock,	McComas,	White,
Grace,	McConnell,	Wilson, of Tehama,
Hale,	McFarland,	Wyatt—75.

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

MR. SCHELL. Mr. President: I believe that a similar resolution was offered to this body and I opposed its adoption, as I do the adoption of this. Perhaps the last vote plainly indicates that the resolution will be adopted; nevertheless, I desire to say a word or two in opposition to the adoption of the resolution. The resolution, if I understand it correctly, proposes a committee to be appointed, one from each Judicial district in the State. That would necessitate the appointment of twenty-three members of the Convention, which makes a committee too large and unwieldy. Now, sir, if I understand it rightly, it says further, that this Committee, if it be appointed, be appointed in behalf of the Constitution. It is, I take it, to be a committee to recommend the adoption of the Constitution. Now, sir, look at that proposition a moment, that we must have a committee here to recommend to the people the work of this Convention. If we adopt a Constitution here it will have to be by a majority of this body, and I take it that amounts to a recommendation. Can it add anything to the force or effect of it to appoint a committee of this body to recommend the same thing?

MR. HUESTIS. The gentleman does not understand the resolution at all. It does not say to recommend it.

MR. SCHELL. Does it not propose to appoint a committee in behalf of the Constitution?

MR. HUESTIS. No, sir; it does not.

MR. SCHELL. Then let it be read.

THE SECRETARY read:

Resolved, That the President of this Convention be requested to appoint, at an early day, a committee, to consist of one from each judicial district, whose duty it shall be to prepare an address to the people of this State, setting forth concisely the principal amendments proposed by this Convention to the present Constitution, and, as far as practicable, the reasons therefor; said address to be submitted to the Convention for action thereon before its promulgation.

MR. SCHELL. Now, sir, it is not as I understood it to be exactly; but I do not think it alters the case much. In order, sir, to explain fully the amendments which have been adopted here, which, by the way, are

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legion, it would take a whole volume. I think it will be admitted here that a great deal of legislation is put into this proposed Constitution; that the amendments are numerous, and there are many very radical changes from our present Constitution. I undertake to say, sir, that to state the reasons for all these changes would require a document longer than the Constitution itself, that we may adopt. I do not desire to go over all these objections which I raised here before, and I merely wish to say that the reasons for such a proposition are not sufficient to warrant this body in passing that resolution. I hope, sir, it will not be adopted.

MR. BROWN. Mr. President: It appears to me, sir, that the Constitution framed for any State ought to represent the principles which are contained in it sufficiently clear, sufficiently correct, and sufficiently forcible; and whenever we take in consideration an address made to the people explanatory of the reasons why different prominent features of the Constitution were embraced, why, without we indorse such explanation, such arguments will need almost as much explanation as the great principles embraced in the Constitution itself. And it would appear to me very like an effort to explain something, and to enforce something, and to preach in behalf of something that does not possess those true merits which it should.

Now, I am under the impression that when this Constitution goes out before the people, there will be enough in it to study, there will be enough in it to investigate, without the argument and representation of abstract views, if we may call them such, of a committee. It will take almost as much time, and as much attention to investigate what is said by the committee, as to study the Constitution itself. Now, it appears to me self-evident, in a case of this kind, that if we attempt anything of this kind, it is evident that we conclude that the people are not competent to understand this work. Now, members will be called upon to explain this Constitution at home, and when they attempt their explanations they will come in conflict with the explanations of the committee, and it will only look the more complicated. These are some of the difficulties which must necessarily attend the proposition for explanations, and arguments in favor of the Constitution. I am under the impression if it goes forth in its native vigor, with these principles which are embodied in it, every member that is here can give such explanation to his constituents as would suit any reasonable man. I am convinced that there is scarcely a member here, perhaps there are a few exceptions, but what wishes that this Constitution should be adopted, but as to getting up something in order to enforce it, in order to make it appear right at all hazards, I think it is better to let it stand in its pristine excellence, and let it live or die upon its own merits.

MR. WEST. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out the words 'one from each judicial district,' and insert 'nine.'

MR. WEST. Mr. President: I am in favor of the amendment and the resolution as amended. It is not expected that the committee will enter into an elaborate argument, but that they will state briefly the differences between this and the old Constitution. That can be done very briefly.

MR. MURPHY. Mr. President: I send up a substitute.

THE SECRETARY read:

Resolved, That a committee of three from each Congressional district be appointed by the President, whose duty it will be to prepare an address to the people of this State, to accompany the proposed new Constitution; the said address briefly pointing out the most radical changes proposed.

MR. VACQUEREL. Mr. President: I am opposed to the substitute and the amendments, and the resolution. It seems that we have been committing a crime, and we want to exonerate ourselves before our crime goes before the people. We are asking for absolution of our sins. Now of course we may be men of good judgment, but the people, I think, have good judgment too. I think the people are educated enough to judge of our work, and this sending out an address to show them that we have been right where sometimes we may have wrong, I think looks like a little—I will not say bulldozing—but it seems something like it anyhow. Therefore I hope that the resolution will not prevail.

MR. LARKIN. Mr. President: I am in favor of an address being presented to the people of this State, briefly stating the changes that have been made by this Convention. An address of that kind will call particular attention to the changes between this and the old Constitution. I think it should be presented to this Convention, and it should be adopted by this Convention. It should be presented by men who are in earnest in favor of this Constitution. With such an address presented to the people, I think it would call particular attention to these matters and would assist in explaining the reasons why the people should adopt this Constitution. As to the number that may be upon that committee, I am not particular, but I am particular that that committee should be composed of men that are favorable to this Constitution, and shall state briefly, in the most concise manner, the changes that are made between this and the present Constitutions.

Messrs. Wellin, Waters, Tully, White, and Gorman demanded the previous question, which was ordered by the Convention.

The amendments of Messrs. West and Murphy were rejected.

Upon the adoption of the resolution of Mr. Huestis, the ayes and noes were demanded by Messrs. Hale, Filcher, Blackmer, Steadman, and Huestis.

The roll was called, and the resolution adopted by the following vote:

AYES.

Andrews,	Beerstecher,	Caples,
Ayers,	Bell,	Condon,
Barbour,	Blackmer,	Doyle,
Barry,	Burt,	Evey,
Barton,	Campbell,	Farrell,
Filcher,	Kelley,	Rhodes,
Freud,	Kenny,	Shoemaker,
Glascock,	Kleine,	Shurtleff,
Grace,	Lampson,	Smith, of Santa Clara,
Hale,	Larkin,	Smith, of San Francisco,
Harrison,	Lavigne,	Stedman,
Harvey,	McCallum,	Stuart,
Herrington,	McComas,	Swenson,
Holmes,	McConnell,	Tully,
Howard, of Mariposa,	Moffat,	Tuttle,
Huestis,	Moreland,	Van Voorhies,
Hughey,	Murphy,	Wellin,
Hunter,	Nason,	West,
Johnson,	Nelson,	White,
Jones,	O'Sullivan,	Wilson, of Tehama,
Joyce,	Prouty,	Wyatt—63.

NOES.

Belcher,	Gorman,	Reynolds,
Biggs,	Heiskell,	Ringgold,
Boggs,	Herold,	Rolfe,
Boucher,	Howard, of Los Angeles,	Schell,
Brown,	Keyes,	Shafter,
Casserly,	Larue,	Soule,
Chapman,	Lindow,	Steele,
Charles,	Mansfield,	Stevenson,
Crouch,	Martin, of Alameda,	Sweasey,
Davis,	Martin, of Santa Cruz,	Swing,
Dean.	McFarland,	Townsend,
Dowling,	McNutt,	Turner,
Dudley, of Solano,	Miller,	Vacquerel,
Dunlap,	Morse,	Walker, of Tuolumne,
Eagon,	Neunaber,	Waters,
Edgerton,	Ohleyer,	Wilson, of 1st District,
Freeman,	Porter,	Winans,
Garvey,	Pulliam,	Mr. President—54.

CHINESE RESOLUTION.

MR. SHURTLEFF. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the thanks of this Convention be and are hereby tendered to the Congress of the United States for the triumphant passage of the bill restricting the immigration of Chinese to this country, and that the members of the Senate and House of Representatives, who supported that vital measure, merit and will receive the lasting gratitude of the people of California.

Resolved, That the Secretary is hereby directed to transmit copies hereof to the Senate and House of Representatives.

MR. SHURTLEFF. Mr. President: The intelligence of the final passage of the bill restraining Chinese immigration to this coast was telegraphed here last Saturday, the House concurring in the Senate amendments. To-day that important bill goes to the President of the United States for his signature. There has been, as all know, a violent opposition to that bill. The same spirit that protested against the destruction of African servitude at the commencement of this century, now raises a wail against this restriction of the Chinese coolie trade on this coast or in this country. But the representatives of the people have stood firm. They have done what we all believe to be to the interest of every man, woman, and child in America. The Senate of Rhode Island and Senate of Connecticut have passed resolutions condemning the action of the Senate and the House of Representatives, and asking the President to veto that important measure. I think it will be no egotism in us to assume that we know a great deal more about the subject of Chinese immigration, the black plague of American civilization, than do the people of Rhode Island or Connecticut. [Applause.] I hope that the members of this Convention will pass that resolution unanimously; that we may stand by our representatives, not only the delegates from this coast, but those from the other side of the mountains, who have grappled with this question and assisted in the passage of that bill.

MR. LARKIN. I move the previous question.

MR. STUART [not recognized]. I move to lay it on the table.

Messrs. Gorman, White, Harrison, and Wyatt also demanded the previous question, which was ordered by the Convention.

Upon the adoption of the resolution, the ayes and noes were demanded by Messrs. Larkin, Barton, Dunlap, White, and Huestis.

The roll was called, and the resolutions adopted by the following vote:

AYES.

Andrews,	Dowling,	Holmes,
Ayers,	Doyle,	Howard, of Los Angeles,
Barry,	Dudley, of Solano,	Howard, of Mariposa,
Barton,	Dunlap,	Huestis,
Beerstecher,	Eagon,	Hughey,
Belcher,	Evey,	Hunter,
Bell,	Farrell,	Johnson,
Biggs,	Filcher,	Jones,
Blackmer,	Freeman,	Joyce,
Boggs,	Freud,	Kelley,
Boucher,	Garvey,	Kenny,
Brown,	Glascock,	Keyes,
Burt,	Gorman,	Kleine,
Campbell,	Grace,	Lampson,
Caples,	Hale,	Larkin,
Casserly,	Harrison,	Larue,
Chapman,	Harvey,	Lavigne,
Condon,	Heiskell,	Lindow,
Davis,	Herold,	Mansfield,
Dean,	Herrington,	Martin, of Alameda,

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Martin, of Santa Cruz,	Prouty,	Townsend,
McCallum,	Pulliam,	Tully,
McComas,	Rhodes,	Turner,
McConnell,	Ringgold,	Tuttle,
McNutt,	Rolfe,	Vacquerel,
Miller,	Schell,	Walker, of Tuolumne,
Moffat,	Shafter,	Waters,
Moreland,	Shoemaker,	Wellin,
Morse,	Shurtleff,	West,
Murphy,	Smith, of Santa Clara,	White,
Nason,	Smith, of San Francisco,	Wilson, of Tehama,
Nelson,	Soule,	Wilson, of 1st District,
Neunaber,	Stedman,	Winans,
Ohleyer,	Steele,	Wyatt,
O'Sullivan,	Stevenson,	Mr. President—107.
Porter,	Swenson,	

NOES.

Barbour,	McFarland,	Sweasey,
Crouch,	Reynolds,	Swing,
Edgerton,	Stuart,	Van Voorhies—9.

NOTICE.

MR. MURPHY. I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the resolution was adopted to-day, authorizing the appointment of a committee of nine to prepare an address to the people of this State, in relation to the new Constitution.

THE JOURNAL.

MR. CAMPBELL. Mr. President: I am represented in the printed Journal as offering an amendment to section twenty-one of the article on legislative department, to strike out the word "any" and insert the word "this." That amendment was offered by Mr. McCallum. I desire to have it corrected.

THE PRESIDENT. The gentleman is properly represented in the written Journal.

MR. EDGERTON. It appears from the Journal that Mr. Edgerton offered an amendment to strike out the word "such," in line four. That amendment was offered by Mr. Campbell.

MR. CAMPBELL. And accepted by you.

RESOLUTION.

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

THE SECRETARY read:

Resolved, That the thanks of this Convention be and they are hereby tendered to Denis Kearney for his services in the anti-Chinese cause.

[Applause.]

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

MR. STUART. I hope that will be seconded, so that we can discuss that matter.

MR. MURPHY. I move to insert "William Wellock."

MR. BARBOUR. Ayes and noes.

MR. GRACE. Ayes and noes.

MR. DOYLE. Ayes and noes.

MR. BELL. Yes; the ayes and noes.

MR. SMITH, of San Francisco. Ayes and noes.

MR. LARUE. Mr. President: I move to lay the resolution on the table.

Mr. Larue moved to lay the resolution on the table, upon which the ayes and noes were demanded by Messrs. Barbour, Grace, Doyle, Brown, and Smith.

The roll was called, and the resolution laid on the table by the following vote:

AYES.

Andrews,	Howard, of Los Angeles,	Pulliam,
Ayers,	Howard, of Mariposa,	Rhodes,
Belcher,	Huestis,	Rolfe,
Biggs,	Hughey,	Schell,
Blackmer,	Johnson,	Schomp,
Boucher,	Jones,	Shafter,
Brown,	Kelley,	Shoemaker,
Campbell,	Lampson,	Shurtleff,
Caples,	Larkin,	Smith, of Santa Clara,
Casserly,	Larue,	Smith, of 4th District,
Chapman,	Lavigne,	Soule,
Davis,	Mansfield,	Steele,
Dean,	Martin, of Alameda,	Stevenson,
Dudley, of Solano,	Martin, of Santa Cruz,	Stuart,
Dunlap,	McCallum,	Swing,
Eagon,	McComas,	Townsend,
Edgerton,	McConnell,	Tully,
Filcher,	McFarland,	Turner,
Freeman,	McNutt,	Tuttle,
Freud,	Miller,	Vacquerel,
Garvey,	Moffat,	Van Voorhies,
Glascock,	Moreland,	Walker, of Tuolumne,
Hale,	Murphy,	Waters,
Harvey,	Nason,	Weller,
Heiskell,	Neunaber,	Wilson, of Tehama,
Herrington,	Ohleyer,	Wilson, of 1st District,
Hitchcock,	Porter,	Winans,
Holmes,	Prouty,	Mr. President—84.

NOES.

Barbour,	Barton,	Bell,
Barry,	Beerstecher,	Boggs,
Burt,	Herold,	Ringgold,
Condon,	Hunter,	Smith, of San Francisco,
Crouch,	Joyce,	Stedman,
Dowling,	Kenny,	Sweasey,
Doyle,	Keyes,	Swenson,
Evey,	Kleine,	Wellin,
Farrell,	Lindow,	West,
Gorman,	Nelson,	Wickes,
Grace,	O'Sullivan,	White,
Harrison,	Reynolds,	Wyatt—36.

MR. VACQUEREL [when his name was called]. As this resolution is against the principles of the Workingmen's party, that no man should be thanked for doing his duty, I vote aye. [Applause.]

MOTION TO RECONSIDER.

MR. McCALLUM. Mr. President: On the last day of the Convention I gave notice of a motion to reconsider which reads as follows: "Mr. President: Notice is hereby given that I will, on to-morrow, or as soon thereafter as the motion can be heard, move to reconsider the vote by which the article on 'future amendments' was adopted. Also, to reconsider the vote by which the Convention refused to strike out the words, 'on the proposition for a Convention,' in the fifth line, of section two." I make the motion at the request of some gentleman who desire to have an opportunity to correct their votes on the subject. I do not propose to argue it. I am still in favor of the adoption of the motion.

MR. STEDMAN. Mr. President: I move to lay the motion to reconsider on the table.

The motion prevailed.

REVISION AND ADJUSTMENT.

MR. BEERSTECHER. Mr. President: I call up the resolution I offered on Friday.

THE SECRETARY read:

Resolved, That the President appoint three additional members upon the Committee on Revision and Adjustment.

MR. BEERSTECHER. Mr. President: There are fifteen members on that committee, but only about twelve working members, as I stated the other day. This will increase it to eighteen members. By some oversight or inadvertence on the part of the appointing power, all of the persons comprising that committee are chosen from other parties than the Workingmen's party, and the Workingmen's party have one third of the delegates upon this floor and are certainly entitled to one member on that committee. And therefore, it having been an oversight or inadvertence upon the part of the appointing power, I make this motion, that there can be a representative of that element upon this committee.

MR. EDGERTON. Mr. President: So far as the efficiency of that committee is concerned, it will be much more advisable to reduce it to five than it would be to increase it by any number.

MR. SHAFTER. Mr. President: That committee did me the honor to appoint me Chairman upon the resignation of Judge Hall. We had six of these articles come in to us, commencing at half past seven o'clock, and we disposed of four of them. If we are not troubled with too many members we will get through to-morrow night, all that is submitted to us. There is very little really necessary to do. I respectfully submit that any greater number on the committee would have no good effect, and if any gentleman desires my place on the committee it is at his disposal.

The resolution was lost.

JUDICIAL DEPARTMENT.

THE PRESIDENT. The unfinished business is the article on Judicial Department.

THE SECRETARY read the substitute offered by Mr. Inman as follows:

"Substitute for section two of the article on Judicial Department: 'Section two. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, excepting such business as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment.'"

THE PRESIDENT. The first question is on the amendment offered by the gentleman from Sacramento, Mr. Edgerton. The Secretary will read it.

THE SECRETARY read:

"Amend section two by inserting after the word 'justice,' where it first occurs in line twenty-three, on page two, the following, viz: 'All sessions of the Court, whether in bank or in departments, shall be held at the capital of the State.'"

MR. AYERS. Mr. President: I hope that this Convention will not go back on its action in Committee of the Whole. This matter of retaining the Supreme Court at Sacramento alone was fully discussed in the Committee of the Whole, and it was concluded to leave it to the legislative department, where it is now. There is no use of multiplying words upon this amendment, and I will therefore merely ask that this Convention follow the rule of the Committee of the Whole so that the Supreme Court may be in session wherever the Legislature may determine it shall be.

MR. EDGERTON. Mr. President: I do not rise to repeat the arguments, if they are worthy of that appellation, which I had the honor to submit to the Committee of the Whole upon this question. If, however, we were to follow the suggestion of the gentleman from Los Angeles, I think this amendment would meet with favor, because I believe it is true that this Convention has repeatedly gone back on and repudiated the work of the Committee of the Whole and changed it from top to bottom. I have only to suggest, in reference to this matter, that, as I am advised, and I believe I am correctly advised, that it is the work of

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a large majority of the bar of this State, that the Supreme Court be located permanently in one place, as a matter of economy; it is certainly a matter of economy for the State to have it in one place.

MR. SHAFTER. Mr. President: I trust the Convention will fix one place for the Supreme Court, and I am, for one, indifferent as to where it shall be. Now, if one department of the Supreme Court sets at Los Angeles, and another department is in session here, or somewhere else, and the same question is presented to both, it may decide both ways. If they were where they could confer together there would be no such difference of opinion; they could hear the case in bank, where there was such a division of opinion. I think that some definite place should be fixed.

REMARKS OF MR. WEST.

MR. WEST. Mr. President: I suppose that the object of courts is for the benefit and accommodation of the people, that questions of law and equity shall be decided in accordance with the principles of right, and by subserving the best interests of justice and of the people. Now, you will remember—and I ask the attention of the Convention—that this Convention has been memorialized by the members of the bar in the southern part of the State, setting forth the reasons why a session of the Court should be held annually at Los Angeles. The reasons are fresh upon your minds, but for fear that some of the Convention may think that it is a matter of mere personal convenience to the bar, I wish to call the attention of the Convention to this fact, that in southern California, especially from the original unsatisfactory condition of the land titles, and the unfortunate location of a large amount of lieu land scrip, involving the title to a large tract of country now occupied by actual settlers, by persons who have purchased it in good faith, and paid the full price, in many cases exorbitant prices, difficulties have arose to disquiet these titles. Questions have arisen in the Courts, and very many of these settlers are absolutely too poor to fee an attorney to come up here to the Supreme Court in Sacramento; whereas, if there was a term there the local attorneys could attend to these duties at home for the people, at very much reduced rates. I now urge upon this Convention the justice of permitting a session to be held at Los Angeles, under the statute as it is at present, in consideration of the rights of that class of people who cannot come up here or fee an attorney to come here. I myself know of cases of poor men who are lawed out of their land simply because they could not raise money to send an attorney up here.

MR. EDGERTON. I would ask the gentleman if his vast experience in the practice of law, and in the argument of cases in the Supreme Court does not teach him that it costs a litigant only fifteen dollars to get into the Supreme Court and get out again; and it makes no difference whether it is in San Francisco, Sacramento, or Los Angeles?

MR. WEST. I am aware that the fees are the same, but the fees of the attorneys are different. I am aware that perhaps a gentleman located here, at Sacramento, would not raise this point. He might be very anxious that all cases be tried here, for the purpose of endeavoring to monopolize the legal business of the State as far as they can in Sacramento. I ask the careful consideration of the Convention on this one point that I have submitted.

REMARKS OF MR. EAGON.

MR. EAGON. Mr. President: I opposed, in the Committee on Judiciary, the moving of the Supreme Court from place to place, and having it in any other place than the State capital. I believe, sir, that this is the place where the Supreme Court should be held, and no other place. All this talk about economy to litigants has no bearing upon this case at all. If the people of Los Angeles desire to try a case in the Supreme Court, it costs them no more to try it in Sacramento than it does in Los Angeles. There are no witnesses to be brought here; there is no expense attending it. Now, I oppose it on another ground. Before this building was erected here, every year there were applications before the Legislature to remove the State capital, and it kept up and kept up until it was a source of annoyance to the Legislature, and a source of great expense to the State, until we got it fixed by building such a building here as the people would not tolerate the moving of the State capital. Now, sir, this thing will not stop here. They will want a Supreme Court at Marysville, in Butte County, or in Siskiyou County, or some other remote county in this State. There will be no end to this thing if it is not cut off squarely in the Constitution. There is no necessity for the Supreme Court to be on wheels, if for no other reason than to maintain the dignity of that Court. Running it all over the country it loses its dignity. I hope it will be put in this Constitution that we will have it here and nowhere else.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: This matter was fully discussed twice before this Convention, and twice the Convention, by a large majority, determined that the people of the southern part of this State should have the benefit of the presence of the Court at Los Angeles once at least in the year.

MR. EDGERTON. If Los Angeles should have it, why not the people of Siskiyou?

MR. BEERSTECHER. When they want it they can have it. It was stated on this floor that the Judges of the Supreme Court themselves have expressed their willingness to go to the southern part of the State, and of the efficiency of the Court while going from one part of the State to the other. Of course gentlemen like the gentleman from Sacramento, Mr. Edgerton, who are residents of this place, would like to have the Court permanently located here. They have selfish and sordid motives in desiring the Court to be located here. People, of course, have been in the habit, because unable to appear by their own attorneys, of sending their business to gentlemen who live here.

MR. EDGERTON. Will the gentleman from Kalamazoo allow me? Of course I have a certain legal pride in Sacramento, but I should very much prefer that it should be permanent in any other place to having it on wheels. Above all things, I desire that it shall be permanent; and if it cannot be permanent in Sacramento, for God's sake let us have it permanent in San Francisco, or Los Angeles, or in Kalamazoo.

MR. BEERSTECHER. Well, the gentleman has been so favorably impressed with the word "Kalamazoo," which he heard at a variety show here, that he has not been able to get it out of his head yet. Now, this leaves it to the Legislature. If the Legislature see fit to say that the Court shall be permanently located at Sacramento, then Sacramento will be the permanent location. The Legislature should have the power to say where the Court can sit. The people of Los Angeles enjoy the privilege and immunity to-day of having the Court sit at their city. Why say in this Constitution that it shall not sit there? I hope we will stand by our former decision.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I believe it has been stated here that it has been the custom to hold the Supreme Court at the capital, except in one or two instances. As I cannot accommodate the bar of Sacramento in my vote, I propose to state that precedent is not in accordance with that statement. In looking over eighteen Constitutions which I find in American Constitutions, volume two, I find that in sixteen out of the eighteen the Constitution provides for holding Courts in different portions of the State, and in that respect the Supreme Court is different from the other departments of the government, where the officers are required to do business and, I believe, in most cases, have their residence at the State capital. There are only two Constitutions enumerated—that is, Nevada and Texas—where the Supreme Court is absolutely required to be held at the capital. Now, we propose to leave it just exactly as it is in the old Constitution, and where the law places it. We do not propose to amend the Constitution in that respect. Now, as to the expression of the bar, I must say that my experience is different from that of the gentleman from Sacramento.

MR. EDGERTON. Does not the gentleman know that most of the lawyers of San Francisco, having business with the Supreme Court, prefer that it should be in one place?

MR. MCCALLUM. So far as I have heard expressions from these gentlemen, it has been the other way. It is impossible to know unless you call the roll. California is the second State in size in the American Union, and when Texas shall be divided, as it may be in the near future, California will be the largest, and is a State where, more than any other, such a provision as this is just to the people—leaving the bar out of the question entirely. I propose to leave the Constitution just as I found it, so far as my vote is concerned.

MR. MANSFIELD. Mr. President: In the six lower counties of the State, accommodated by this Court at Los Angeles, there is a population of nearly one hundred thousand people. They pay into the treasury two hundred and sixty-eight thousand dollars a year, and this is the first recognition of any importance that they have ever received. The entire expense of the Court is less than six thousand dollars. I have the figures upon that subject, and ask the Secretary to read them.

THE SECRETARY read:

HON. JOHN MANSFIELD, Constitutional Convention:

DEAR SIR: I have the honor to acknowledge the receipt of yours of even date, and in reply thereto, will state that the actual expenditure of the Supreme Court at Los Angeles will not be over six thousand dollars per annum.

D. B. WOOLF, Clerk of the Supreme Court.

MR. MANSFIELD. The number of cases on the calendar there last September was one hundred and fifty. For an attorney to come here to attend to a case involves an expense of nearly one hundred dollars. A single term at Los Angeles saves more to the people accommodated by this Court than the entire cost of the Court per annum. I hope the amendment will be voted down.

MR. ANDREWS. Mr. President: I desire but a few words to respond to the remarks of the gentleman from Sacramento, in behalf of Siskiyou. If he had only added Shasta and Trinity, it would have been all that I could have asked. If we are going to have our Supreme Court on wheels, Mr. President, I think that Shasta, Trinity, and Siskiyou ought to have a chance. That august body might find it a little rough up there, but they would find it grand and lofty.

MR. SMITH, of Fourth District. Mr. President: This matter was fully argued in Committee of the Whole, and the facts brought here to show that the southern portion of this State demanded that they should have the Supreme Court remain there. There is a large population there, and that city is growing very rapidly. We leave the matter just as it is to-day, to the Legislature. If Shasta should become populous, she might have the Supreme Court there as well as any portion of the State. It would not be unwise to leave the matter to the Legislature. This idea of restricting the Legislature so much is wrong. I venture to say, that the gentlemen who do not care whether this Constitution is adopted or not, will vote to restrict the Legislature in this particular. If this amendment is put in, the southern portion of the State will vote strongly against the Constitution. I think it is nothing more than right that it should be left to the Legislature.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: I rise to ask a question, in order that I may vote intelligently on this amendment. What is troubling me now, and what I most desire to know, is whether this is an economical body; whether it is in favor of retrenchment and reform? I do not hear any reply. I hear no answer, and so for information I ask to refer to a few figures. Perhaps some of the economists in this Convention do not know what it costs to hold the Supreme Court on a wheelbarrow and run it over the State into the different counties. There are some amusing items taken from official records in this respect. The first one at the head of the list is: "Los Angeles, rent one hundred and seventy-

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five dollars per month; San Francisco, rent four hundred and fifty dollars per month; Los Angeles, porter seventy-five dollars a month"—they have to have a porter there whether there is any Court or not; "San Francisco, porter seventy-five dollars a month"—they must have a porter, you know; "Los Angeles, Clerk one hundred and fifty dollars per month; San Francisco, Clerk one hundred and fifty dollars per month"—we must have Clerks and porters wherever the Court goes, whether there is any Court there or not; "board nine hundred dollars"—board for the Supreme Court nine hundred dollars; that is on the Los Angeles trip; board costs a good deal down that way; "incidentals" [laughter]—I don't know what that is; I never saw that word in an account before; I don't know what it is; but it is down here for two hundred and fifty dollars.

MR. MANSFIELD. I would like to ask the gentleman what he is reading from?

MR. REYNOLDS. A copy of the official records down stairs.

MR. MANSFIELD. The gentleman knows that he cannot produce that kind of evidence in any Court.

MR. REYNOLDS. I was not aware that I was in Court, or under oath; but if the gentleman wants to verify the figures that I have read, he has but to go in the office down stairs and find what the Board of Examiners have allowed.

MR. MANSFIELD. I would ask if that intellectual Colosus, the Controller of this State, is a member of that Board? The Record-Union published a statement, claiming that the information was got from the Controller's office in this State that a single term of the Court cost thirty-seven thousand four hundred dollars. That is a falsehood, and the man who published it knew it. The man that reiterates it knows it. The entire appropriations for two years was but thirty thousand dollars, and to come into Court with that sort of a paper it seems to me looks suspicious.

MR. REYNOLDS. I do not know what relevancy these statements have to these curious expenditures. The Board of Examiners have allowed for board nine hundred dollars—one month—and now it is expected that a claim will come in for board in San Francisco, while the Court is being held down there. Whether they expect to get their board while in Sacramento, I do not know. Now, the whole amount that it costs to keep this Court on wheels is two thousand two hundred and twenty-five dollars a month, amounting to twenty-six thousand seven hundred dollars a year. Now, the gentleman from Shasta says that it can be held in his county all the time for less money than that. Now, we have been practicing so much economy here this Winter, that without consuming any time in debating this question, I thought I would read these figures for the information of gentlemen who expect to vote upon the question. These, Mr. President, are expenses of the Court incurred in Sacramento.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I do not know what the gentleman from San Francisco is reading from. I imagine that he has swallowed the multiplication table. That that Board or any examining committee has a right to allow board for the Judges of the Supreme Court is perfectly ridiculous.

MR. EDGERTON. I would like to ask the gentleman a question.

MR. HOWARD. No, sir. The gentlemen is prolific in questions, and he pops up and pitches into everybody. If we hold this Court in sections it must be held at different places, and if it is not the sections will do no good. It was upon the principle of King Alfred that justice should be brought home to every man's door. And now, in a State as large as this, if the Court is to be fixed at one place, and that place liable to inundation and every other calamity, there will be seasons when it cannot be held at all. The interests of justice require that it shall be held at different places. In the Summer the heat in Sacramento is such that it is totally unfit for the Supreme Court, and the Judges are unfit to work, and it is the interest of justice, and in the interest of the people that the Summer term should be held in San Francisco, or some other place where men can transact intellectual business. I warn gentlemen that if they adopt this proposition they knock this Court of two sections, and they might as well make up their minds to it now as any other time.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. President: It seems to me that it is rather a delicate matter for our friends from Los Angeles to talk on this thing at all.

MR. AYERS. How about Sacramento?

MR. McFARLAND. I have not said anything, and need not add anything, to what was so well said by my colleague, Mr. Edgerton. We have had a little more delicacy than our friends from the lower country. Our object is to have the Supreme Court located at one place. If Sacramento is not a good place for it put it at San Francisco. I am willing, if that is a better place; but it should be permanent where the archives are kept, and where the State capital is. I know that a majority of the members of the bar, who do not happen to come from the particular region of Los Angeles, after having tried the experiment of having Court in San Francisco, prefer to have it here. Every lawyer who goes into Court with an important case desires two or three days of preparation. When he comes to Sacramento he has the State library, which belongs to him as much as anybody. He can take possession of it, and while he is waiting for his case in the Court, he can devote that time to a greater preparation of the case in the State library. You cannot do that even in San Francisco. You go to San Francisco to argue a case, and what are the facts? There is a library there belonging to the Supreme Judges, but you cannot get into it. You cannot send for a book that you happen to need, like you can here.

Now, it has been said here that there are only one or two Constitutions that locate the Supreme Court permanently at the capital; but there are only a few States where the Supreme Court is allowed to sit at more than one place. The only reason they can do it here is because the Legislature has decided the places where the Supreme Court shall sit. In nearly all the States alluded to, where the Constitution does not make any provision, the Supreme Court is located at the capital, and nowhere else. I understand that there are one or two, or three, but not more than half a dozen, where the Supreme Court is held at another place than at the State capital.

MR. MANSFIELD. Don't Illinois, Iowa, Missouri, Texas, and I believe, Pennsylvania?

MR. McFARLAND. No, sir. I do not know——

MR. McCALLUM. Will you allow me——

MR. McFARLAND. No, sir; I will not allow you. I will say that in seven tenths of them, the Supreme Court is held at one place, and if no other different rule has been established in the Constitution, it is because the legislature do not propose to make any different rule. But, sir, if we take it to San Francisco, and then to Los Angeles, in an other year it may go to the northern part of the State. Now, the question is whether it is wise to allow these court records to be scattered all over the State. Would it not be better to have it at one place. Of course it is some disadvantage to attorneys who do not happen to live near the capital. You cannot expect to have everything in one place. They have got oranges, lemons, Italian skies, summers modified by ocean breezes, at Los Angeles. That is enough, sir. They cannot expect to have all the blessings that Providence confers upon man in one place. They are no worse off than the gentlemen from Shasta, or many other places, who have to come some distance. Everybody knows that the Supreme Court cases are tried upon records. Almost all cases are followed to the Supreme Court by the attorneys who tried them below. It is certainly no advantage to the attorneys of Sacramento, for they seldom have anything to do with the cases of other attorneys, except where they are called upon to do some work for nothing, and as a mere matter of courtesy to a friend. But it is better to have the Supreme Court at one place, disregarding all personal or local questions. We who live in Sacramento to-day, may live in San Francisco two years from now. This is a broader question than that, and I do think it is best to have it at one place, wherever that place may be.

MR. WHITE. Mr. President: I hope that this very great injustice to Southern California will not be perpetrated by this Convention, of taking away the Supreme Court from them. The distance is very great from here to that country. I know that the people are very much excited about this very question. I have received several letters myself urging me to watch this. The letters very strongly urge their claims, and ask to have it left to the Legislature. They do not want any clause saying that Los Angeles shall have a Court. They want to leave it to the people, through their representatives in the Legislature, to say where the Court shall sit. I tell you that they may regard it as an insult, and it will create such a feeling that we cannot get this Constitution a fair consideration in the southern portion of the State, if we perpetrate this injustice to them. So I trust and pray that the fair feeling which undoubtedly prevails in this Convention will leave the Legislature to direct this thing as they see fit.

MR. BLACKMER. Mr. President: As to the argument of the gentlemen who spoke in favor of the amendment, that it would detract from the dignity of the Court to have the terms held in different portions of the State, it seems to me that if it is necessary to preserve its dignity that it be in a body in the City of Sacramento, that the Supreme Court Judges had better be appointed rather than elected. Now, sir, the matter of holding this Court in different places is an experiment that is now in process of being worked out under the direction of the Legislature, and it is but just that that matter should be left to them to continue this until they have determined whether it is wise to continue it or not. If the Supreme Court of this State is to be located anywhere in the State of California, as a permanency, Sacramento is not the place for it, neither geographically nor any other way. If it is to be put anywhere as a permanency, and never be moved, that place should be San Francisco. There can be no question about it, and to attempt to fasten it here at Sacramento is unwise, and is an injustice if it shall be consummated. I ask it, sir, on behalf of the constituents whom I represent, who have sent their representative here to this body asking that it be not fixed as a permanency at this place, but that it shall be left to the Legislature. That request should certainly receive respect at the hands of this Convention. It is folly to put this iron rule here, to say that the Supreme Court should forever be held in the City of Sacramento. I hope this amendment will not be adopted.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Sacramento, Mr. Edgerton.

MR. WHITE. Ayes and noes.

The ayes and noes were also demanded by Messrs. Ayers, Brown, Howard of Los Angeles, West, and Lindow.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Glascock,	Porter,
Belcher,	Hale,	Reynolds,
Biggs,	Harvey,	Rhodes,
Burt,	Hughey,	Schomp,
Caples,	Jones,	Shafter,
Casserly,	Kelley,	Shoemaker,
Davis,	Keyes,	Stevenson,
Dudley, of Solano,	Larue,	Townsend,
Dunlap,	McConnell,	Turner,
Edgerton,	McFarland,	Vacquerel,
Filcher,	McNutt,	Wilson, of Tehama,
Freeman,	Ohleyer,	Wilson, of 1st Dist.—36.

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NOES.

Ayers,	Hitchcock,	Ringgold,
Barbour,	Holmes,	Rolfe,
Barry,	Howard, of Los Angeles,	Schell,
Barton,	Howard, of Mariposa,	Shurtleff,
Beerstecher,	Huestis,	Smith, of Santa Clara,
Bell,	Hunter,	Smith, of 4th District,
Blackmer,	Inman,	Smith, of San Francisco,
Boggs,	Johnson,	Soule,
Boucher,	Joyce,	Stedman,
Brown,	Kenny,	Steele,
Campbell,	Larkin,	Stuart,
Chapman,	Lavigne,	Sweasey,
Condon,	Lindow,	Swenson,
Crouch,	Mansfield,	Swing,
Dean,	Martin, of Alameda,	Tully,
Doyle,	Martin, of Santa Cruz,	Tuttle,
Evey,	McCallum,	Walker, of Tuolumne,
Farrell,	McComas,	Waters,
Freud,	Miller,	Weller,
Garvey,	Moffat,	Wellin,
Gorman,	Moreland,	West,
Grace,	Nason,	Wickes,
Harrison,	Nelson,	White,
Heiskell,	O'Donnell,	Winans,
Herold,	O'Sullivan,	Wyatt,
Herrington,	Pulliam,	Mr. President—78.

THE PRESIDENT. The question recurs on the amendment offered by the gentleman from Alameda, Mr. Inman.

MR. REYNOLDS. I am in favor of the amendment, and in order that it may be perfected I offer the following amendment to the amendment.

THE SECRETARY read:

"Insert after the word 'Justices,' at the end of line one, as follows: 'Who shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected, and their term of office shall be ten years from and after the first Monday of January next succeeding their election; provided, that those elected at the first election shall, at their first meeting, so classify themselves, by lot, that one Justice shall go out of office every two years. The Justice whose commission shall first expire, shall be Chief Justice, and thereafter each Justice whose commission shall first expire shall in turn be Chief Justice. If a vacancy occur in the office of any Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of Justices shall be at the first general election after the adoption and ratification of this Constitution. The Supreme Court shall always be open for the transaction of business.' Also add to the end of the section as follows: 'In the determination of causes, all decisions of the Court shall be given in writing, and the grounds of the decision shall be stated.'"

MR. WYATT. Mr. President: I second the amendment.

THE PRESIDENT. It is not an amendment to the amendment.

MR. INMAN. I accept the amendment.

THE PRESIDENT. The gentleman can accept the amendment with the consent of the Convention, and not otherwise.

MR. HOWARD. I object.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. The amendment is merely an addition to the amendment offered by the gentleman from Alameda, Mr. Inman. It is needless to say that this is a complete substitute for sections two and three of the report of the Committee on Judiciary. It is a complete substitute for the double-headed Supreme Court. It is a complete substitute for all of these unheard of powers granted to the Chief Justice by sections two and three, which I have referred to. It is the exact language of the present Constitution so far as the number of Judges is concerned, so far as the manner of their election is concerned, and so far as their terms are concerned, excepting only in relation as to who shall be Chief Justice. The language is there changed a little so as to determine beyond the possibility of a doubt that the Justice who is oldest in commission, who has the shortest term to serve, shall each in their turn be the Chief Justice. There is then a little addition made to the section, taken from the end of the third section of the report concerning a vacancy, that he shall be appointed and hold until the election and qualification of a successor, who shall hold the office for the remainder of the unexpired term. That provision will be found at the end of section three of the report. Then there is a further provision, not found in the old Constitution, that in the determination of cases all decisions of the Court shall be given in writing, and the grounds of the decision shall be stated.

Now, I have before stated some of my objections to this scheme of a Supreme Court. In the first place it is untried; it is unheard of. I have been examining the Constitutions of the other States, and I can find nothing like it between the lids of any book. That is an objection—that it is new and untried. Again, I can find nothing like these transcendental powers given to a Chief Justice. It is true that the Chief Justice must exercise great control over the management of cases, and the management of the Court, but it is not true that any such scheme ever devised was written or in a Constitution, or ever should be. I am opposed to it on that ground. I am opposed to it again because with this scheme of departments there never can be a satisfactory determination of a case except after three trials. You must have a trial of the case in department, and then you must have another trial to get it referred to the Court in bank, and then to get a judgment of the Court you must have another hearing. The longest purse would be likely to win the case—he who could hold out longest. I would be opposed to the election of the Chief Justice for any term, however short, but here we propose to elect a Chief Justice for a term of twelve years, and we propose further to give him absolute power over any man's case.

THE PRESIDENT. The gentleman's time has expired.

MR. REYNOLDS. It seems to me that the reading of the amendment ought not to be taken from my time. I have only a word or two more to say.

THE PRESIDENT. It is part of your time, sir.

REMARKS OF MR. WYATT.

MR. WYATT. Mr. President: I hope that the amendment of the gentleman from San Francisco, Mr. Reynolds, will be adopted. It continues the old Supreme Court in its present form, with such improvements as are suggested by the working of that Constitution until its adoption in eighteen hundred and sixty-four. It defines the terms of the Court, so that there can be no question any longer when a gentleman is elected or appointed as to what his term may be; or rather, it prevents them all from being elected at one time, as may be the case under the present Constitution—by the Constitution creating the present Supreme Court. It divides them so that their terms are ten years, one going out each two years, and the one having the shortest commission being Chief Justice. I am in favor of that, because I believe the present Supreme Court amply sufficient to do the business of this State. As I understand it, the present Judges, some of them the best qualified to speak, say that five Judges now are amply sufficient to discharge the duties incumbent upon that Court; that the docket of that Court is now up with the business; that they are keeping up with the business; that they are able to keep up with the business; and that two additional Judges are not necessary in order to efficiently conduct the business of that Court. If that is the case; if the Court is amply sufficient to do the business of the Court; if promptitude can be administered in the affairs of the Court, then it is unnecessary to fasten upon this State two additional Judges, with the expenses of such Judges.

I am in favor of it as against the plan proposed by the committee, for the further reason that that plan vests too much power in the Supreme Judge of that Court. It gives to the Supreme Judge and the members of that Court almost, in my opinion, the same power that the Czar of Russia has in his dominions. It places it in the power of that Chief Justice to direct the manner of decisions of that Court. He can say what class of cases shall go to these three men, and what class of cases shall go to that three men. Then it is that he can make a redivision of the men into sections, and then it is that he can reapportion the cases in order to dictate the decisions of these men as he may want to do it, and in spite of the Court itself, the Chief Justice could direct what the line of decision should be, and he stands there as the Chief Justice for twelve years. Not only that, but we put in here in the Constitution, and make a permanent constitutional provision of that which should only be a simple rule of the Supreme Court in dividing the business, and in the manner of conducting its business, and so it would be changeable and flexible, as the rules of the Supreme Court ought to be. I am, therefore, opposed to the Supreme Court, as proposed by the committee, for that reason. It is too late in the day now, to go back and copy from the fashion of some Supreme Court that was established a century ago, and say that your Supreme Court is like that. We are not hunting for models of that character. Supreme Courts now are modeled more upon the principle of the present manner of conducting governments in the United States, and in accordance with the liberal principles and liberal views of conducting governments at this time.

But under this Supreme Court the question is, when you appeal to the Supreme Court which is proposed by the committee, not whether you appeal to the Supreme Court or not, and base the decision of questions on the learning and the honesty of seven men that have been elected by the people of the State as a Supreme Court, but you appeal to a Chief Justice to say whether your case shall be tried once or twice, and whether it shall be tried before three men or seven men. I say that we ought to establish no such provision as that in the Constitution of our State; and the law should be, that when you appeal to the Supreme Court you appeal to the Supreme Court, and not to the Chief Justice, as to whether he is going to allow you to be heard, or try your case in the Supreme Court or not. I am therefore in favor of the amendment offered by the gentleman from San Francisco, Mr. Reynolds, because it continues the framework of the present Supreme Court, it continues the number of the present Supreme Court, it continues the efficiency of our present Supreme Court, and that is sufficient, taking them as a standard, taking their testimony upon the subject; and they say that they are amply sufficient to discharge the duties of that Court, as to the number of the Judges.

MR. WILSON. Did the Supreme Court tell you that personally?

MR. WYATT. They did not, Mr. Wilson. I will further inform the gentleman that I have not the honor of the acquaintance of any Judge of the Supreme Court; but as a matter of history—as a matter of current history of the State—I do propose to have some knowledge of the Supreme Court; although I now state that I never appeared in the Supreme Court, and have never appealed a case in the Supreme Court, and I do not claim that acquaintanceship and familiarity with the members of the Supreme Court that many other gentlemen do claim. But I claim to have some knowledge of the Supreme Court notwithstanding that fact; and the business of the Supreme Court is not so intricate, not so profound, and not so dark as that it cannot be fathomed with any reasonable search and investigation. I do state, as a matter of fact, that two Judges of the Supreme Court, and two of the leading Judges of the

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Supreme Court, have stated to gentlemen on this floor, and since this Convention has been in session, that the extra number of Judges were uncalled for and unnecessary, and that the present Supreme Court was sufficient to do the business of the Supreme Court. And I further say that the double Supreme Court that is provided for in this recommendation of the committee is an untried and unheard of Court; one, too, that enlarges in one constitutional provision all the ordinary rules of the Supreme Court in the Constitution, but so interweaves and entangles them together, that it will take ten years at least for any Supreme Court to approve a system that would be known to the bar of this Court in the administration of justice. That Chief Justice of the Supreme Court, as provided for there, is so plenary in his powers and so unlike anything that has gone before him, that he is entitled to that degree which the Emperor of China has found necessary to give to Chin Lan Pin. The Emperor of China said to him that in consequence of the great power and the great services that he had conferred upon the empire, and of the great power conferred upon him, that he had honored him with the decoration of the third order of the peacock feather; and nothing would be equal to the honor that would be conferred upon the Chief Justice, proposed by the committee, except to honor him with the like decoration of the third order of the peacock feather.

THE PRESIDENT. Time.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: The Committee on Judiciary and Judicial Department is composed of nineteen lawyers, some of whom are the oldest lawyers in the State, and have been for many years attending every session of the Supreme Court. There were upon that committee two ex-Judges of the Supreme Court. The report of the committee was almost unanimous; so much so that it may be practically called a unanimous report. It was manifest to the committee that any five Judges of the Supreme Court were utterly inadequate to perform the business of that Court and write opinions. A report was presented to us by Mr. Woolf, the Clerk of the Court, showing a number of cases and the disposition of cases in the Supreme Court. I had the honor to ask for that report, and it was placed on the table of every member of this body. That report showed that more than one third, nearly one half, of the decisions of the Supreme Court were rendered without an opinion in writing—a fact to which I call the attention of the Convention as showing the fact of the utter inability of the Supreme Court to decide the cases, and keep up with the calendar, and write opinions, and that they were only able to keep up as far as they have have by omitting that very important duty. Now, everybody knows who has reflected at all upon this subject, or knows anything at all about it, that opinions must be written by a Court of last resort as matters of precedent. It is a very different thing from sitting down and saying that the judgment of the Court below is reversed or affirmed without giving any reasons, because when that is published, nobody knows whether that decision is right or wrong. But when the Judge has to sit down and write an opinion, or, in the language of this amendment reported by us, that they must give their opinion in writing, stating the grounds of the decision, then they are brought before the whole bar of the State, and they are bound to present themselves in a position where law and reason sustain the adjudication. Consequently it is the universal practice in the Courts of last resort in the States, and the Supreme Court of the United States, to render opinions addressing themselves to the intelligent judgment of the bar of the State or of the country, and of the Judges of the country.

Now I say, as a simple fact beyond contradiction, that the Supreme Court of California, composed of five men, is unable to discharge the duties of that Court and write opinions, and the report of Mr. Woolf shows that fact; some five hundred and odd cases having been decided without any opinion; and several gentlemen upon the floor here can testify to most important cases which had to go back into the Court below for new trials, where the Court had no data as to what the opinion of the Court was upon the questions and points presented; this occurred to myself in several instances. Therefore, this being an accepted fact before the Committee on Judiciary, the question was this: how can we increase the effective working power of the Court so as to enable it to perform its duty? To increase the number from five to seven did not change the power. If you are going to keep the Court working in one body then reduce it to three; three is better than five, and five is better than seven, and seven is better than nine. But the question is: how, under this condition of things, shall we increase an effective working power and enable the Courts to keep up the business? There were two plans. One was the establishment of the Court of Appeals, and the other was to increase the number of Judges from five to seven, and allow these Judges to sit in departments, and in that way enable them to keep up the business. After a great deal of discussion in that committee, and interchange of views on several occasions, the committee came to the conclusion that of these two schemes, the one since presented by the committee was a preferable one. The Court of Appeals in the State of New York has proved unsatisfactory to the bar, and has proved a sort of receptacle for worn out old Judges, and liable to be brought into conflict with the regular Supreme Court. The committee decided upon this plan, and I declare as my judgment, after twenty-five years of experience, that unless this system is adopted—to allow the Court to sit in departments—the Supreme Court of California will always be a year behind in its labor, and any citizen who wants to have his case heard, will have to wait one year at least after his case is regularly filed in the Supreme Court before he can be heard. Now, this system here is one which has received the approval, not only of the committee, but of a very large portion of the bar of the State of California who have had large experience in this matter, men who ought to know, men who have thought and reflected upon this subject. A large number of the lawyers of this State have given their judgment in favor of this as the best system which could be devised. My friend immediately upon my right, Judge Belcher, who was an honored member of that bench for some years, gives it his approval because of his personal knowledge of the working of that tribunal.

Now, as to the power of the Chief Justice, I cannot say that this argument is bosh, because it would not be respectful; but what is the power of this Judge? Why, Mr. Cross offered an amendment which I accepted to the extent of my capacity to accept and facilitate its adoption, giving power to the majority of the Court to control the question of sending to bank or retaining in departments. Where is this tyrannical and autocratic power? There is nothing at all in it. He is given the ministerial duty of assigning the six Judges their places in the departments, and arranging the calendar, which is done now by the Chief Justice of the State, and has been done by the Chief Justice of the State, and of all States throughout all time. These Judges are not compelled to sit there upon his assignment. This provision provides that they may change places. This is not a positive and absolute assignment. It is intended that the Judges may arrange this business to suit their judgment. They are qualified to sit in either branch. The Chief Justice may sit in either branch, and always make a complete complement in either of these Courts when some Judge was absent writing up an opinion. It provides that any four Judges may order a case to be heard in bank, so that if he declined to order a case in bank, a majority of the Court could order it into bank, notwithstanding him; and what a majority of the Court refuse to do is final in any case, because, in this country, in the judicial department, as well as in all other official departments, the majority must control. Now, the Chief Justice has it not in his power to do a particle of harm. Now, to disturb this system and adopt this amendment is simply to go back to an inadequate judicial power, insufficient to perform the duties, and go before the people of this State with the positive record evidence that this Convention, with a knowledge of the inadequate judicial power of the Supreme bench, had declined to remedy it. I took occasion to show by statistics, when this was before the Committee of the Whole, that the work of this Court is greater far than the work done by the Supreme Court of the United States, and that the present Court have only been able to do it by omitting to perform a very important part of their duty, which is to write opinions, and to give reasons for their decisions in the cases. Whilst this is not perfect, yet I give it as my opinion that it is the best system that has as yet been devised for the efficient working of the Supreme Court, and in that I am happy to say that a very large portion of the most intelligent and the most experienced and oldest attorneys in the State agree. As a matter of course, the great mass of the business of the State would be done in the two departments. A majority always having the power to send a case into bank, there could be no wrong committed, unless it was by majority, and a majority could always commit a wrong, organize the Court as you please. I hope that the Convention will vote down the amendments and adopt the report as it now stands engrossed.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I have already, sir, stated my objections to the plan, and do not now propose to reargue them. I am in favor of the amendment offered by the gentleman from Alameda, as amended or extended by the amendments of my colleague from San Francisco, Mr. Reynolds. That merely restores the system as we have it, with one or two additions that are demanded, and it is left in that flexible condition which I maintain it ought to be, so far as these matters of rule and practice and of procedure are concerned, subject to the regulation of law and the Court itself, by its own rules. Now, sir, I admit that it is presumptuous on the part of one who is not old or experienced to have an opinion in this Convention upon a legal proposition. But, as I have said before, a plain man may exercise his common sense upon a plain proposition, and according to that I maintain that this very section here in this judicial article is a piece of monstrous stupidity, and that is all that can be said of it. A gentleman has said here that the present Supreme Court is unable to perform the business before it. He says that upon the experience of the great lights of the bar of the State, as he says. He says that upon the judgment of two former Justices or Judges of the Supreme Court. Now, sir, since this proposition has been before the Convention, the present Chief Justice of the Supreme Court of this State has said that five Judges are abundantly able to perform the business of the Court, and that seven are not necessary.

MR. WILSON. To whom?

MR. BARBOUR. Mr. Chief Justice Wallace said that to Mr. White, and not very long ago either. Now, sir, if that be true where is the argument about the capacity of the Court. I admit that the capacity of the Court may be increased, but it is not to be increased by inserting in the Constitution a mass of details concerning procedure, which, never before, even a Legislature sought to interfere with. The ordinary rules of practice that govern a Court are always made up by the Court itself, and placed on file as required by law. I am willing to add a provision that the Legislature may increase the number by the addition of two Judges. Now, sir, I disagree with the gentleman that you cannot increase the power by the addition of Judges, because if you have seven Judges it is not necessary that all these Judges should be present hearing every argument. Two or three of these Judges will be writing opinions whilst the balance of the Judges are hearing the cases. Now, sir, when they consult together and come to a conclusion they appoint one of their number to write an opinion, and whilst the Court is in session and trials going on the opinions can be written. Now, one word about the writing of opinions. We have here now fifty-two volumes of Supreme Court reports. That includes the written opinions. Now, when we require them to state the reasons for a decision, we do not mean they shall write a hundred pages of detail. We not mean that they shall include the small cases, and impose on the country all this fine judicial literature, for the Lord knows we have got enough of that

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already. To give us the reason for it does not take three lines. I maintain that there is hardly a single case, many points as may be made, that cannot be cleared up, and reasons given in five pages. Many of the decisions now in the reports contain thirty pages. Let them write short opinions in all cases, and I contend that it will not be difficult for them to write up all the decisions of the Court. One word more as to this thing of departments. I maintain that this arrangement that is made here, instead of facilitating business is to increase the business of the Court, and to clog the administration of justice instead of facilitating it. Now, sir, you hear a case in one of the departments, and then it is heard in bank again. Why not go into the Court at once and hear it, and decide it, and be done with it. Now, it is fair to presume that two thirds of the cases will be appealed and go into bank, or every time it is heard and only two Judges concur in the opinion, according to the issues under consideration, they must go into bank. Now, look at it. Two of the Judges failing to agree with the other, that case must go into bank and be reargued and reheard. Does not that consume more of the time of the Court by far than to have heard the case at once. With regard to this argument that they are facilitating the business of the Court, it seems to me that I see in it a project by which the calendars would be infinitely more clogged up than by a provision that the cases should go right into Court and be heard. The gentleman who addressed this Convention last, exercised himself to prove that this is a good system. Take for instance, the subject of the assignment of the Judges to the departments. It is true, as the proposition afterward provided, that the Justice may assign the Judges or break up the Court as he may see fit; that they may interchange with one another by an agreement among themselves. The rest of the Judges have not a word to say about it, but you have got to get an agreement out of these two men, and practically where the case has been heard it could only be done by the assent of the Chief Justice. Consequently that is no protection at all, because by shuffling up the cards the Chief Justice could make up just such a Court as he can out of the material he has. Now, sir, it is true that a majority of the Court by the amendment of my friend Mr. Cross, of Nevada, are authorized to order a case from department into bank, but that requires a majority of the Court to do that, and unless that majority can be procured to do it you have no earthly means, although it may be the most important case ever brought up in the State of California, except by the arbitrary will of the Chief Justice.

THE PRESIDENT. The gentleman's ten minutes have expired.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. President: I have but one or two suggestions to make. If the gentleman will consult the present Constitution, he will find that it is in substance precisely the same as the amendment which he has sent up, and although apparently he does not provide that one Judge shall go out of office every two years, and that the Judge whose commission expires first shall be the Chief Justice, he will find that it is left in the precise condition of the amendment of eighteen hundred and sixty-four, which was held by this Court unanimously, and by the most eminent lawyers of the State, to mean that the Justice was elected for ten years, and that the Chief Justice held his office for ten years. I cannot be mistaken about that. I have carefully compared that amendment with the present Constitution.

MR. REYNOLDS. Will the gentleman permit me to state what the amendment is?

MR. EDGERTON. In the language of the gentleman from Los Angeles: "No, sir; no, sir." Now, then, I suppose there are a great many gentlemen on this floor that have no experience in the practice of law at all—farmers, mechanics, etc. Now, sir, I have a very great respect for the gentleman from Monterey, Mr. Wyatt. I have watched his course during this Convention, and I believe he always acts conscientiously and square up to his idea of what is right; but I appeal to him, whether he in this matter would take the judgment of persons who never had any experience at all against those whose whole lives had been involved in the question under consideration. Now, sir, at my left is one of the most distinguished lawyers in the State; a gentleman who has adorned the Supreme bench of this State; who knows what he is talking about—and I refer to Judge Belcher, of Marysville—and he gives this scheme his entire approval. It was also approved by many eminent Judges and lawyers in San Francisco, and was devised by the Bar Association of that city, borrowing it theoretically from the suggestions in the bill of Alexander H. Stevens, introduced into the House of Representatives, and which receives the sanction of Judge Davis in the Senate of the United States. Judge John W. Dwinelle appeared before the Judiciary Committee of this body and presented this bill, and urged its adoption. He appeared here as one of a committee deputed by the bar of San Francisco to get this Convention to adopt this scheme; and I do not know, and neither does the gentleman know, that John W. Dwinelle wants to take it back. About what the present Justices of the Supreme Court say, I hold that they are not to be consulted. They may possibly desire to retain office. I do not impute that, and I do not believe it; but I do not believe that any gentleman is authorized to come upon this floor and undertake in this debate to say what a Judge of the Supreme Court may have said upon the subject. I think it is an abuse of his confidence if he did say any such a thing. I can certainly have no object in view except the interests of this State, and the interests of the litigants that I may represent; and I believe that in the working of this Supreme Court, that instead of waiting five or six months, we will get prompt decisions, and have the reasons therefor in writing.

Messrs. Hunter, Dean, Larkin, Doyle, and Holmes demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment of Mr. Reynolds, the ayes and noes were demanded by Messrs. Reynolds, Larkin, Doyle, Barton, and Herrington.

The roll was called, and the amendment rejected, by the following vote:

AYES.

Andrews,	Herold,	Neunaber,
Barbour,	Huestis,	O'Sullivan,
Barton,	Hughey,	Reynolds,
Bell,	Hunter,	Ringgold,
Boggs,	Inman,	Shurtleff,
Condon,	Jones,	Smith, of Santa Clara,
Crouch,	Joyce,	Smith, of San Francisco,
Dowling,	Kelley,	Stedman,
Doyle,	Kenny,	Sweasey,
Dudley, of Solano,	Keyes,	Swing,
Evey,	Larkin,	Turner,
Farrell,	Lavigne,	Tuttle,
Filcher,	Lindow,	Vacquerel,
Freud,	Mansfield,	Wellin,
Glascock,	McComas,	West,
Gorman,	Moffat,	Wickes,
Grace,	Moreland,	White,
Harrison,	Nason,	Wyatt—56.
Harvey,	Nelson,	

NOES.

Ayers,	Hale,	Rhodes,
Barry,	Heiskell,	Rolfe,
Beerstecher,	Herrington,	Schell,
Belcher,	Hitchcock,	Schomp,
Biggs,	Holmes,	Shafter,
Blackmer,	Howard, of Los Angeles,	Shoemaker,
Boucher,	Howard, of Mariposa,	Smith, of 4th District,
Brown,	Johnson,	Soule,
Burt,	Larue,	Steele,
Campbell,	Martin, of Alameda,	Stevenson,
Caples,	Martin, of Santa Cruz,	Stuart,
Casserly,	McCallum,	Swenson,
Chapman,	McConnell,	Tully,
Charles,	McNutt,	Walker, of Tuolumne,
Davis,	Miller,	Waters,
Dean,	Morse,	Weller,
Dunlap,	Murphy,	Wilson, of Tehama,
Eagon,	Ohleyer,	Wilson, of 1st District,
Edgerton,	Porter,	Winans,
Freeman,	Prouty,	Mr. President—62.
Garvey,	Pulliam,	

MR. HERRINGTON [before the vote was announced]. I change my vote from no to aye, for the purpose of moving a reconsideration.

Upon the adoption of the amendment of Mr. Inman, presented on Friday last, the ayes and noes were demanded by Messrs. Reynolds, Larkin, Barbour, Kenny, and Herrington.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Huestis,	Ringgold,
Barbour,	Hughey,	Shurtleff,
Barton,	Hunter,	Smith, of Santa Clara,
Bell,	Inman,	Smith, of San Francisco,
Boggs,	Jones,	Soule,
Condon,	Joyce,	Stedman,
Crouch,	Kelley,	Sweasey,
Dowling,	Kenny,	Swing,
Doyle,	Keyes,	Tuttle,
Dudley, of Solano,	Larkin,	Vacquerel,
Evey,	Lavigne,	Webster,
Farrell,	Mansfield,	Weller,
Filcher,	McComas,	Wellin,
Glascock,	Moffat,	West,
Harrison,	Moreland,	Wickes,
Harvey,	Nason,	White,
Herold,	Nelson,	Wilson, of Tehama,
Herrington,	Reynolds,	Wyatt—54.

NOES.

Ayers,	Hale,	Porter,
Barry,	Heiskell,	Prouty,
Beerstecher,	Hitchcock,	Pulliam,
Belcher,	Holmes,	Rhodes,
Biggs,	Howard, of Los Angeles,	Rolfe,
Blackmer,	Howard, of Mariposa,	Schell,
Boucher,	Johnson,	Schomp,
Brown,	Lampson,	Shafter,
Burt,	Larue,	Shoemaker,
Campbell,	Lindow,	Smith, of 4th District,
Caples,	Martin, of Alameda,	Steele,
Casserly,	Martin, of Santa Cruz,	Stevenson,
Chapman,	McCallum,	Stuart,
Charles,	McConnell,	Swenson,
Davis,	McNutt,	Tully,
Dunlap,	Miller,	Turner,
Eagon,	Morse,	Walker, of Tuolumne,
Edgerton,	Murphy,	Waters,
Freeman,	O'Donnell,	Wilson, of 1st District,
Freud,	Ohleyer,	Winans,
Garvey,	O'Sullivan,	Mr. President—64.
Gorman,		

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MR. SHOEMAKER. I move that the Convention do now adjourn.

The motion was lost, on a division, by a vote of 52 ayes to 61 noes.

MR. LAMPSON. Mr. President: I move that we take a recess until seven o'clock.

The motion was lost, on a division, by a vote of 49 ayes to 64 noes.

MR. WALKER, of Tuolumne. I move that we adjourn.

The motion prevailed, and at five o'clock and thirty-five minutes P. M. the Convention stood adjourned.

ONE HUNDRED AND FIFTY-FIRST DAY.

SACRAMENTO, Tuesday, February 25th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Graves,	Mills,
Berry,	Gregg,	Murphy,
Cowden,	Hager,	Noel,
Cross,	Hale,	Overton,
Dudley, of San Joaquin,	Hall,	Smith, of Santa Clara,
Fawcett,	Hilborn,	Terry,
Finney,	Laine,	Van Dyke,
Freeman,	Lewis,	Walker, of Marin.
Glascock,	Mansfield,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Mills.

Two days leave of absence was granted Mr. Glascock.

Indefinite leave of absence was granted Mr. Lewis.

THE JOURNAL.

MR. LINDOW. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

JUDICIAL DEPARTMENT.

THE PRESIDENT. The Convention will resume consideration of the article on judicial department.

MR. BELCHER. Mr. President: I send up an amendment to section seventeen.

THE SECRETARY read:

"Amend section seventeen by inserting the words 'Yuba and Sutter combined,' between the words 'Sacramento' and 'Nevada,' where they occur in the last line but one in the section."

MR. WILSON, of First District. I second the amendment.

MR. BELCHER. Mr. President: It will be recollected that when this matter was up before, upon my motion and at my suggestion, the Counties of Yuba and Sutter were combined for judicial purposes. I stated then that one Judge, I thought, could do the work of the two counties, and that it would be a saving to have one Judge and give him more work and more pay. If they were separate, under the present plan they would receive six thousand dollars, and under this plan they would receive four thousand dollars. It seems to me that there can be no objection on the part of any one to the motion I make, and I therefore hope that this amendment will be adopted at once. The delegations from the two counties are unanimous in asking for it.

MR. OHLEYER. Mr. President: It will be remembered that when this matter was up before the Committee of the Whole we arrived at this point that I opposed any action in the union of the two counties from the fact that I had not had an opportunity to consult with the people of my county. After that I took some pains to consult with our people, and while I found some opposition I also found some that were in favor of it; and now, in the condition that this article is now in, it is a matter of economy, both to the State and the counties, that this amendment be adopted; so I support the proposition.

MR. ROLFE. Mr. President: I suppose that every one concedes that Yuba and Sutter should have a Judge with a salary of the highest class.

The amendment was adopted.

MR. HOLMES. Mr. President: I send up an amendment to section seventeen.

THE SECRETARY read:

"After the word 'Nevada,' in the thirteenth line, insert 'Fresno.'"

MR. HOLMES. Mr. President: Fresno is one of the largest counties in the State, and there is as large a business done in that county almost as there is in San Joaquin. I think that she ought to be entitled to have one of the first class Judges.

MR. ROLFE. Mr. President: I do not object to putting Fresno up into the first class if we put all the others of the same class up. I see at the last general election Fresno polled one thousand and ninety-five votes; that is about two hundred less than Lake County; it is three hundred less than Marin County; it is three hundred less than Plumas County; about one hundred more than San Bernardino County; it is about one third as many votes as Humboldt County. I think that of all the counties Fresno is one of the last that should be put up.

MR. HOLMES. I will state that on the Great Register there are two thousand two hundred names, and there is over nine million dollars' worth of taxable property in the county. I have the Register here in my desk, and you can come around here and see it.

MR. SCHELL. Mr. President: It is not so much, sir, that I object to the amendment offered by my friend from Fresno, as it is that I see a general move all along the line if that amendment be adopted. Now, sir, if that be adopted I propose to have my county, Stanislaus, in. I will take occasion——

MR. BARBOUR. How much land to the acre is there in Stanislaus County?

MR. SCHELL. There is an adage which says: "Answer the fool according to his folly." Now, sir, I will take occasion to say that Stanislaus happens to be the leading grain growing county in the State. We raise there, and have for a number of years past, no less than seven million bushels of wheat, to say nothing of the immense quantities of barley that has been produced in that county. We have a population of about ten thousand inhabitants, and I might go on to a considerable extent in stating what a good county the County of Stanislaus is; but, sir, I do not propose to do that—a word to the wise, I hope, is sufficient. I merely mention this to show that if any of the other counties are raised, I propose that we shall have ours raised, too. I would be perfectly satisfied with three thousand five hundred dollars for the Superior Judge of the County of Stanislaus, and I think that, generally, the counties for which the salaries for Judges have been fixed at three thousand dollars, would be better at three thousand five hundred dollars. However, I am satisfied to leave it as it is if all are left so, but if one is raised, a number of them ought to be raised.

MR. WHITE. Mr. President: Our county has about twice the number of votes of Fresno, yet I do not propose to ask any more for our Judge than what we have got. We have two thousand six hundred votes, where they have only about a thousand; we have more taxable property, yet I think we have got salary enough, and I hope this amendment will not prevail. If Fresno is raised, two thirds of the other counties ought to be let in that class.

MR. MCFARLAND. Mr. President: It seems to me that all this attempt to put the smaller counties in the upper class, arises from the fact that gentlemen are conscious that the salary of three thousand dollars is not sufficient in any county of this State; and I do hope that this Convention will reconsider that matter, and that they will strike out four thousand dollars and insert five thousand dollars, and strike out three thousand dollars and insert four thousand dollars, and then it will satisfy everybody.

MR. LARKIN. Mr. President: I believe that the State should pay a certain uniform sum to each Judge, and the balance, so far as the present term shall be fixed, by the members for their respective counties. I desire to offer an amendment to section seventeen, to provide that the State shall pay one thousand dollars to each Superior Judge in this State, and that the balance of his salary as fixed by this Convention shall be paid by the counties. A reasonable compensation in the County of El Dorado would be one thousand dollars.

MR. BIGGS. Make it two thousand five hundred dollars.

Messrs. Evey, Stuart, Moreland, White, and O'Donnell demanded the previous question, which was refused by the Convention.

The amendment of Mr. Holmes was rejected.

MR. BIGGS. Mr. President: I desire to offer an amendment, in hopes that the Convention will adopt it. It is essential and it is right.

THE SECRETARY read:

"Amend section seventeen by inserting 'Butte' after the word 'Nevada,' in the last line but one."

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MR. BIGGS. Mr. President: I would first say that we have between ten and twelve millions of property, and twenty thousand inhabitants; and I have got letters from there, and the Chairman of the Board of Supervisors came down here and stated that the people of the county were perfectly willing to pay it, and that there would not be five hundred votes for the Constitution there unless we can have a first class Judge. We have from three hundred and forty to three hundred and eighty cases during the year. We pay our District Judge five thousand dollars a year, and the County Judge one thousand five hundred dollars a year. I ask Judge Belcher to make a statement of facts.

MR. TULLY. I want to know if the gentleman voted for low salaries.

MR. BIGGS. I did not.

MR. TINNIN. Mr. President: I hope that Butte County will receive her proper place. It is an important county in this State. There are a great many interests there.

MR. TULLY. Mr. President: I hope that this amendment will be voted down. Let gentlemen raise the salaries throughout the State and make them respectable, and pay Judges if they want high salaries in their counties. This thing of voting a little miserable salary to Judges generally, and then getting up and asking high salaries for one county, I object to.

MR. BIGGS. I voted to give your county two.

MR. TULLY. Let us have a general fee bill, and have respectable salaries, or make gentlemen stand in right where they belong. I hope it will be voted down.

MR. BELCHER. Mr. President: I believe it is the worst kind of economy that can be attempted to put the salaries of Judges at a low figure. I am not on my feet, however, now to speak upon that question, but to say that I favor the amendment offered by the gentleman from Butte, Mr. Biggs. Territorially that county is large. It has a large body of the best agricultural land of the State. It has several important towns and villages, the chief of which are Chico and Oroville. There is no better section of country in the State, perhaps in the world, than a large portion of Butte County. It has, also, a large and important grain interest. The county is a wealthy county. Its last assessment roll was twelve millions of dollars. I attended the last term of Court, and found nearly one hundred cases on the calendar of the District Court. While I have favored putting the county that I live in in connection with another county, and urged that one Judge can do the business of both, at the same time I say that in Butte County there is business enough for one Judge, and his time will be so nearly all occupied that he will have nothing to spare. When he comes to do all the business of that county, he will be occupied as much as any one man ought to be occupied. The population being large, the wealth of the county great, the business large, there is no reason why the Judge of Butte County should be paid less than the Judge of any other county in the State. It is a first-class county in every respect. Now, you have got two Judges in Sonoma, both in the first class. I have nothing to say against Sonoma, but it has neither twice the population, twice the wealth, or twice the business of Butte. I hope that this amendment will be adopted.

MR. TOWNSEND. Mr. President: I hope that this amendment will be voted down. This Convention has persistently refused to vote decent salaries for Judges, and then members come forward and eulogize their counties. I consider Butte County decidedly a growing, thrifty, and fine county, and entitled to a first-class Judge; but they refused positively to put it in the other day, and will again. Now, if this Convention is ready to vote for decent salaries for Judges, I am willing to do so; but if they insist on putting down all excepting their own counties, I am opposed to it, and will help to vote it down.

MR. MCFARLAND. Mr. President: I desire to offer a substitute for Mr. Biggs's amendment, if it is in order.

THE SECRETARY read:

"Amend section seventeen by striking out the word 'three,' in line sixteen, page eight, and inserting in place thereof the word 'four;' and by striking out the word "four,' in line nineteen, and inserting in place thereof the word 'five.'"

MR. MCFARLAND. Mr. President: The present salary of District Judges in this State average about five thousand dollars a year. The great bulk of the salaries are five thousand dollars, and quite a number of them are six thousand dollars. I believe there are one or two that are only four thousand dollars. I do not believe that the people of the State demand any lower salaries, but this makes the salaries considerable lower. Now, it does seem to me that when gentlemen attempt to get their counties in the first class, it is because they honestly believe that a salary of three thousand dollars is not enough. I do not believe that it is enough. I do not believe we can get competent Judges in any county of the State for that salary.

MR. WHITE. How much does the United States Judge in San Francisco get—Judge Hoffman.

MR. MCFARLAND. He gets five thousand dollars, and everybody say that is not enough. But in addition to that, Judge Hoffman has a a life tenure. Three thousand dollars is better than eight thousand dollars for a term of years. It has been a universal remark that the salaries of Federal Judges have been too low. I do not believe that there are any considerable number of people in this State that demand Judges' salaries less than four thousand dollars. When I think of it, I believe Judge Hoffman's salary is six thousand dollars.

MR. WHITE. I think four thousand dollars.

MR. AYERS. Mr. President: I have had nothing to say upon this judicial article except when it has affected my locality; but I say, if this question is reopened that we shall not get away from here in another month. The salary question has to my mind been definitely settled, and it ought to remain where it is. There should be an end to this thing. I have no special objection to the County of Butte receiving a first class Judge, but they must draw the line somewhere. If we admit Butte, we must admit other counties, and we are rapidly getting into an inextricable tangle from which we will not emerge. Let us, Mr. President, accept this section as it is, and vote down every amendment, or else we will be here up to nearly the time when the vote should be taken on this Constitution. [Applause.]

Messrs. Lampson, Evey, Nason, Barton, and Rhodes demanded the previous question, which was ordered by the Convention.

Upon the amendment of Mr. McFarland, the ayes and noes were demanded by Messrs. White, West, Gorman, Brown, and McComas.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Holmes,	Shafter,
Biggs,	Howard, of Los Angeles,	Shurtleff,
Boucher,	Larue,	Smith, of 4th District,
Casserly,	Martin, of Alameda,	Stuart,
Chapman,	McFarland,	Townsend,
Charles,	McNutt,	Tully,
Crouch,	Miller,	Van Voorhies,
Dunlap,	Porter,	Waters,
Eagon,	Pulliam,	Wilson, of 1st District,
Edgerton,	Reed,	Winans,
Estee,	Schell,	Mr. President—33.

NOES.

Andrews,	Herrington,	Ohleyer,
Ayers,	Hitchcock,	O'Sullivan,
Barbour,	Howard, of Mariposa,	Prouty,
Barry,	Huestis,	Reynolds,
Barton,	Hughey,	Rhodes,
Bell,	Hunter,	Ringgold,
Blackmer,	Inman,	Rolfe,
Boggs,	Johnson,	Schomp,
Brown,	Jones,	Smith, of San Francisco,
Burt,	Joyce,	Soule,
Campbell,	Kelly,	Stedman,
Caples,	Kenny,	Steele,
Condon,	Keyes,	Stevenson,
Davis,	Kleine,	Sweasey,
Dean,	Lampson,	Swenson,
Dowling,	Larkin,	Swing,
Doyle,	Lavigne,	Thompson,
Dudley, of Solano,	Lindow,	Tinnin,
Estey,	Mansfield,	Turner,
Evey,	Martin, of Santa Cruz,	Tuttle,
Farrell,	McCallum,	Vacquerel,
Filcher,	McComas,	Walker, of Tuolumne,
Freeman,	McConnell,	Webster,
Freud,	McCoy,	Weller,
Garvey,	Moffat,	Wellin,
Gorman,	Moreland,	West,
Grace,	Morse,	Wickes,
Harrison,	Nason,	White,
Harvey,	Nelson,	Wilson, of Tehama,
Heiskell,	Neunaber,	Wyatt—92.
Herold,	O'Donnell,	

Upon the adoption of the amendment of Mr. Biggs, the ayes and noes were demanded by Messrs. Biggs, Belcher, Kelly, Hitchcock, and McCoy.

The roll was called, and the amendment adopted by the following vote:

AYES.

Andrews,	Hale,	Morse,
Barbour,	Herrington,	Neunaber,
Barry,	Hitchcock,	Ohleyer,
Belcher,	Howard, of Los Angeles,	Porter,
Bell,	Huestis,	Reed,
Biggs,	Hughey,	Rolfe,
Blackmer,	Johnson,	Schell,
Boggs,	Jones,	Schomp,
Boucher,	Joyce,	Shafter,
Brown,	Kelley,	Shurtleff,
Burt,	Kenny,	Smith, of 4th District,
Campbell,	Keyes,	Soule,
Caples,	Lampson,	Stedman,
Casserly,	Larkin,	Steele,
Chapman,	Larue,	Stevenson,
Charles,	Mansfield,	Thompson,
Condon,	Martin, of Alameda,	Tinnin,
Crouch,	Martin, of Santa Cruz,	Tully,
Dunlap,	McCallum,	Van Voorhies,
Eagon,	McComas,	Waters,
Edgerton,	McCoy,	Weller,
Estee,	McFarland,	Wellin,
Estey,	McNutt,	Wilson, of Tehama,
Freeman,	Miller,	Wilson, of 1st District,
Freud,	Moffat,	Winans,
Garvey,	Moreland,	Mr. President—79.
Grace,		

NOES.

Ayers,	Dudley, of Solano,	Harvey,
Barton,	Evey,	Heiskell,
Davis,	Farrell,	Herold,
Dean,	Filcher,	Holmes,
Dowling,	Gorman,	Howard, of Mariposa,
Doyle,	Harrison,	Hunter,

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Inman,	Reynolds,	Turner,
Kleine,	Rhodes,	Tuttle,
Lavigne,	Ringgold,	Vacquerel,
Lindow,	Smith, of San Francisco,	Walker, of Tuolumne,
McConnell,	Stuart,	Webster,
Nason,	Sweasey,	West,
Nelson,	Swenson,	Wickes,
O'Donnell,	Swing,	White,
O'Sullivan,	Townsend,	Wyatt—46.
Prouty,		

MR. TINNIN. Mr. President: I offer an amendment to section twenty-three.

THE SECRETARY read:

"Amend section twenty-three by striking out, in line three, the words 'the Supreme Court,' and insert the words 'a Court of Record.'"

MR. TINNIN. Mr. President: It has been ascertained since this article was passed to its present stage that there are many counties in this State that have no lawyer who is licensed to practice in the Supreme Court, and under this present system it would really be impossible in these counties to carry out the scheme as it now stands. As a matter of justice to the people in the several counties in this State, that are situated far from the capital, this amendment should be adopted. It will not in any way injure the interests of the State. These lawyers will be fully as competent to discharge the duties of the position as those who have license to practice in the Supreme Court.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: It may be that in several counties there are lawyers who have never been admitted to practice before the Supreme Court and have practiced before the District Courts; but as it has been said in this Convention before if you are seeking somebody to perform special duties and special business, you seek somebody who is qualified to perform such duties. If you are after an architect you seek a professional architect. If you are after a physician you seek a professional physician. If there be a lawyer who could not get admitted to the Supreme Court, he is not fit to be elected Judge. You may say that there are lawyers who are fit to be admitted and who are not so. I say if there are such, let them come and get admitted to the Supreme Court. Why not? If there be in Siskiyou, or Trinity, somebody who wants to be elected Judge of a Superior Court, and who has not been admitted to practice before the Supreme Court, why not let him come if he is competent? No lawyer should be on the bench when he is not fit to appear before the Court to which his cases may go. I say that it would be the worst kind of policy to strike out this provision and adopt the amendment of the gentleman from Trinity. Why? Because all through these counties you will find incompetent men who can work themselves in politics, and get elected to positions on the bench and decide the rights of people who come before them. The people demand competent men, they need competent men, and I submit that this amendment ought to be rejected.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I hope that the amendment offered by the gentleman from Trinity will prevail. It is well known, and I should think it would be known to the gentleman from Yuba, that in many of the counties of this State, some of the oldest attorneys and some of the most experienced attorneys are not admitted to practice before the Supreme Court. The character of their business has been such that it was not necessary for them to go to the expense and trouble of coming to the Supreme Court to be admitted to practice before that Court. It is a provision that does not exist in our present Constitution, and it will cut off from this position, and from the choice of the people, many of the most experienced attorneys in this State; men who have been practicing for twenty-five years in this State. I presume that the people are qualified to judge of this matter for themselves. I hope that the amendment of the gentleman from Trinity will prevail, because it will be a serious injury to many of the counties if it does not. These counties would be cut off from the services of these men in whom they have confidence, and would have to rely upon men that you might say were specially imported for that purpose. I hope the amendment will prevail.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I think the people are capable of electing their Judges. In Amador County I understand that there is but one man that has been admitted to practice in the Supreme Court. In El Dorado we have a number of men, but whether they would be the men we desired to elect is another thing. I know men that have been practicing in the Supreme Court, that at one time, in the early history of this State, were indicted for grand larceny. There are other men besides those who have answered the conundrums propounded to them by the Supreme Court, who have served the people for thirty years in this State. We have the best judiciary of any State in the Union, and I think that people of the counties should have a right to select from more than one or two men. Under this section they will not have that opportunity, because there are not more than one or two men admitted to practice in the Supreme Court in a large majority of the counties in this State. There are District Judges in this State that have not practiced in the Supreme Court, and many County Judges who have not practiced before the Supreme Court. The people ought to have a right to determine this question, and I hope our distinguished members of the bar association will not make this a close corporation, so that those men that have not seen fit to come here from Siskiyou and San Diego to get admitted to the Supreme Court, cannot be elected to these positions. If we cannot trust the people let us abandon this kind of government.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I do not indorse any one sentiment enumerated by the distinguished jurist from El Dorado. I do not believe that any person knows any thing in any particular line, or profession, instinctively. I believe that he has to learn it. I believe that there ought to be no exception between the professions; that the lawyer ought to be admitted under the same solemnity, and the same form that members of any other profession are admitted to practice their peculiar calling. We recognize everywhere, that the doctor is not permitted to practice his profession until he has a diploma; until he is admitted under the forms of law. A school teacher even cannot draw his salary in this State until he is examined; but some of these distinguished jurists who never saw the inside of a law book, pretend to tell people of this State that a man can practice law and make a good Judge who has not only never studied law, but never been admitted to the bar. I hope that this Convention will not establish a rule different from any other Constitutional Convention, so far as I have been able to observe, in the Union: that you can pick up a man who knows nothing of law, who have never been admitted to the bar, and make a good Judge of him. It is true he may not be a good lawyer, but he is a good Judge. He has to pass upon the most sacred and important rights of life and property, without any study and without any previous preparation. Such argument is contrary to the best experience of thoughtful men everywhere, and I hope that this Convention will not adopt this amendment. There may be some counties where they have no Judge, and no lawyers admitted to the Supreme Court; but there is no county in this State where there are any lawyers, if they desire to be Judges, but that they can come and be admitted if they are capable; and if they are not capable they ought not to be Judges; better far to import a good man than elect an incompetent one. He will try all the murder cases; he will dispose of all the questions as to the settlement of the estates of deceased persons; try ejectment suits, mining suits, and every class of suit. Every class of interest of litigation will come before him, but the gentlemen from El Dorado and Trinity claim that a man needs no particular education in that line, to fit him for that important duty. I hope this Convention will not go back upon its record. I hope it will indorse this section just as it is, that no person shall be permitted to be elected Judge of a Superior Court, in any county of this State, unless he has been admitted to practice in the Supreme Court.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. President: There is one thing about this amendment that might be overlooked, if attention is not called specially to it. It is proposed that Judges of the Supreme Court are to have no qualifications.

MR. TINNIN. I propose to offer a substitute for the section to provide that no one shall be eligible to the office of Judge of the Supreme Court unless he shall have a license to practice in the Supreme Court, and no one shall be eligible to the office of Judge of the Superior Court unless he shall have been admitted to practice in a Court of record.

MR. WATERS. That is just as bad, for every case that goes to the Supreme Court must be first tried in some Superior Court, except certain special proceedings. That being the case, if the people want justice administered cheaply, and if the people want as few appeals as possible, it would be well to get just as good talent on the Superior Court bench as upon the Supreme Court bench, and I think every lawyer and every man who knows anything about this thing, will admit it. Now, if it is an admitted fact that it is just as important to have a good Judge on the Superior Court bench as it is on the Supreme Court bench, and the gentleman proposes now to modify his amendment so as to make the Supreme Judges qualified for their position, it seems to me that he admits the fallacy of the whole thing. There is nothing in it. Now the idea that there are attorneys anywhere in this State who are fit to sit upon the Superior Court bench, who cannot be admitted to the Supreme Court, is a fallacy. There may be instances where attorneys have not had occasion yet to come to the Supreme Court and be admitted, but they can do so whenever they wish when they are capable. I say if an attorney has no more pride in his profession, and no more pride in himself, than to sit down in some little outside county in this State, and never come to the highest Court in the State and be admitted to practice there, he is not fit material for a Judge. I may be wrong about this, but that is my sentiment.

MR. TINNIN. Mr. President: I desire to put my amendment in the form of a substitute.

THE SECRETARY read:

"SEC. 23. No one shall be eligible to the office of Judge of the Supreme Court unless he shall have a license to practice in the Supreme Court of this State; nor shall any person be eligible to the office of Judge of a Superior Court unless he shall have been admitted to practice law in a Court of record in this State."

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: Not being a lawyer I do not presume to discuss this question wholly upon its merits. Nor, in fact, do I propose to enter into the discussion, but simply to reply to some extent to inferences thrown out by the distinguished gentleman from San Francisco, Mr. Estee. He, with his usual eloquence, appealed to the Convention not to deviate from the well established custom of other States in reference to this matter. Now, sir, I happen to have before me the precedents of other States, so far as they have taken action in the matter of qualification of their judiciary, which I will refer to for the information of those who perhaps had not noticed it. I find that many of the States make no restriction, while some have what I consider a wise restriction. I believe that there should be some restriction, but that the one we have adopted goes a little further than we are warranted in going in justice to some of the outside counties. In the State of

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Arkansas, all that is required is that he shall be one year a voter of the State. In the State of Florida, they require that a Judge shall be a practicing attorney of the State. In the Constitution of Georgia, they require that he shall be a citizen of the State, and must have practiced law seven years. All reasonable restrictions. In the State of Illinois, they require that he shall be a citizen of the United States, resident five years in the State; resident of the district. In the State of Kansas, citizen of the United States; reside two years in district; must have practiced law eight years, if not upon the bench of a Court of record. Louisiana, citizen of the United States; five years in State; not less than three years in district; learned in the law, admitted to practice law in the State, and must be distinguished for integrity, wisdom, and sound legal knowledge. Missouri, citizen of the United States five years; voter in State three years. South Carolina, citizen of the United States; resident of State five years, and so on. You will find the great States of New York and Ohio have no restriction whatever. The people are left to judge for themselves. This will open the door for the importation of material solely to fill this position. Suppose in some county there is but one eligible candidate. It makes no difference what may be his moral standing, nor what may be his position in society, or the estimation in which he is held, he must be elected as a matter of necessity. Sir, I think that is going too far, and going much farther than necessity requires.

Messrs. Gorman, Dean, Hunter, Pulliam, and Swenson demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Larkin, Tinnin, Biggs, Kelley, and Grace.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Heiskell,	O'Sullivan,
Barbour,	Herold,	Porter,
Barry,	Herrington,	Prouty,
Beerstecher,	Howard, of Mariposa,	Smith, of San Francisco,
Bell,	Hughey,	Soule,
Biggs,	Hunter,	Stedman,
Brown,	Jones,	Stevenson,
Burt,	Kelley,	Sweasey,
Condon,	Kenny,	Swenson,
Davis,	Keyes,	Swing,
Dean,	Kleine,	Tinnin,
Eagon,	Larkin,	Tuttle,
Evey,	McConnell,	Walker, of Tuolumne,
Farrell,	McCoy,	Webster,
Filcher,	Moffat,	Wellin,
Gorman,	Morse,	West,
Grace,	Murphy,	Wickes,
Hale,	Nason,	Wilson, of Tehama,
Harrison,	O'Donnell,	Wyatt—58.
Harvey,		

NOES.

Ayers,	Inman,	Ringgold,
Belcher,	Johnson,	Rolfe,
Blackmer,	Lampson,	Schell,
Boggs,	Larue,	Schomp,
Boucher,	Lavigne,	Shafter,
Campbell,	Lindow,	Shurtleff,
Caples,	Mansfield,	Smith, of 4th District,
Casserly,	Martin, of Alameda,	Steele,
Chapman,	Martin, of Santa Cruz,	Stuart,
Charles,	McCallum,	Thompson,
Dudley, of Solano,	McComas,	Townsend,
Dunlap,	McFarland,	Tully,
Edgerton,	McNutt,	Turner,
Estee,	Miller,	Vacquerel,
Estey,	Mills,	Van Voorhies,
Freeman,	Moreland,	Waters,
Freud,	Ohleyer,	Weller,
Garvey,	Pulliam,	White,
Hitchcock,	Reed,	Wilson, of 1st District,
Holmes,	Reynolds,	Winans,
Howard, of Los Angeles,	Rhodes,	Mr. President—63.

MR. HERRINGTON. I move to strike out sections two and three and insert the following——

THE PRESIDENT. It is not in order.

MR. HERRINGTON. I appeal from the decision of the Chair.

THE PRESIDENT. Section two has been passed under the previous question.

MR. WILSON, of First District. Mr. President: I desire to call the attention of the Convention to one little error which occurred in section seventeen, which I suppose could be amended by unanimous consent, and that is, that the Judges' salaries are made payable quarterly. It ought to be monthly. I would therefore move that the word be changed by unanimous consent.

MR. LARKIN. I object.

PROSECUTIONS.

MR. MCCALLUM. Mr. President: I send up an amendment.

THE SECRETARY read:

"Strike out, in lines seven and eight, section four, the words 'prosecution by indictment or information in a Court of record,' and insert 'amounting to felony.'"

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: If this amendment should prevail it will leave the Constitution precisely as it is in respect to appeals in criminal cases to the Supreme Court. I deem it of such importance, in view of the fact that there has been no full vote upon the question heretofore in this Convention upon a proposition of such magnitude as this. This is no matter of form. My amendment is greatly right or it is greatly wrong, and in either case every vote ought to be recorded upon one side or the other. The amendment to our present Constitution was made at the suggestion of my colleague, Judge Campbell, and afterwards at the suggestion of Judge Terry, of San Joaquin. As then stated, its main object was to give appeal in libel cases, but I submit even to the gentlemen who supported it, that since that amendment was adopted the action of the Convention has been such as to render such a provision as this directly inconsistent with what we have done in the bill of rights. When the Chairman of the Judiciary Committee accepted the amendment which I now propose to strike out, I then suggested that in Convention what was called the Fawcett amendment would probably be struck out. Since that time, by a majority vote, the Fawcett amendment was struck out, and section nine of the bill of rights now provides that in criminal prosecutions for libel the jury shall be the judge of the law as well as the fact; so that the object which this amendment had in view, namely, to give appeal in libel cases, is wholly defeated by leaving the Constitution as it is in respect to the jury being the judge of the law and the fact. How can you appeal to the Supreme Court on a question of law when the jury itself is made the judge of the law? Are you going to appeal from the judgment of the jury upon a point of law to the judgment of the Court on a point of law, saying at the same time that the jury shall be the judge of the law? If this proposition stands as it reads it will be saying, to read the two sections together, the jury in certain criminal cases shall be the judge of the law; next, the Supreme Court shall be the judge of the law. Or, in other words, the jury shall be the judge of the law; next, the jury shall not be the judge of the law. A great author has written: "Oh, consistency! thou art indeed a jewel!" and I submit that if we adopt this section as it reads, that they who vote for it may be called gems of the first water.

Now another serious objection. This section says that there shall be appeals in all criminal cases prosecuted by indictment or information in a Court of record, on questions of law alone. What are the cases prosecuted in a Court of record by information or indictment? In every county we have now a District Court and a County Court, which are Courts of record for a prosecution in criminal cases, at least District Courts; and we have in the City of San Francisco two other criminal Courts that are Courts of record, having jurisdiction in misdemeanors even in the lower class; that is, the class of misdemeanors where the punishment does not exceed a fine of five hundred dollars, and imprisonment not exceeding six months. This article before us provides that the Legislature shall provide inferior Courts of record, and then under this section all misdemeanors, without scarcely any exception, or in fact, in one view, without any exception whatever, may be appealed to the Supreme Court, because misdemeanors, even at the Justice's Court, which are prosecuted by information, may be appealed to the Supreme Court, and where so appealed, by the provisions of this section they would be criminal cases prosecuted in a Court of record; because this section makes no distinction between the Court having the original jurisdiction of the case and those procuring an appeal. Then, sir, all this class of misdemeanors—the higher misdemeanors—will be appealed with scarcely an exception to the Supreme Court of the State. That may reap a rich harvest of fees for those lawyers whose criminal practice is mainly in cases of misdemeanor; but I have to say that it will at the same time reap a rich harvest of curses from those who have legitimate business in the Supreme Court, and whose business thereby will be greatly delayed. We have heard since this judicial article has been before us continually of a necessity for a change; and this article proposes to change by giving two additional Judges, in order to facilitate the business of this Court; in order that justice might be administered without delay. If the Supreme Court is to be inundated by this class of petty appeals in petty cases, I say that the whole object of the system will be defeated, in providing for a Supreme Court to sit in two sections, or to sit in two departments, and giving two additional Judges, in order that we might have a more speedy administration of public justice in the Supreme Court of the State.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I hope that the amendment of my colleague will not be adopted. This matter was discussed after we had disposed of the libel question entirely, and one of the reasons why the section stands in its present shape was because, in the opinion of the Convention, it was proper that in the higher class of misdemeanors there should be an appeal. Now take, for instance, a case of obtaining money or goods under false pretenses; there are intricate questions of law liable to arise. There is a penalty of one year's imprisonment, and fine not exceeding five thousand dollars, and the party may be sentenced to restore the property, of whatever value. Should there be no appeal, in such a case as that, to the Supreme Court? It seems to me very clear that there should, and it was to meet that class of cases, and that is a comparatively limited class. It applies only to that class of cases which must be prosecuted either by indictment or by commitment by a committing Magistrate, after examination. In that class of higher misdemeanors it seems to me that it is right that there should be an appeal. The minor class of misdemeanors are provided for in the succeeding section, which provides that the Superior Court shall have appellate jurisdiction in all that class of cases. As it stands now, the system is perfectly harmonious, and outside entirely of the question of libel, it gives an appeal in cases where there ought to be an appeal. So far as the question of libel is concerned, it is merely giving an appeal where there has been an erroneous ruling of the Court in regard to the admissibility of evidence—I suppose it would be then. The jury of course can not determine what evidence shall be admitted; that is a question that

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the Court has to determine in the progress of the trial. Of course, in that class of cases, there would be an appeal, as in case of any other case of misdemeanor. It seems to me that the section is proper as it is. It has been once adopted and sustained by the Convention, and I hope it will be again.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. McCallum, Grace, Lampson, Caples, and Walker of Tuolumne.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barton,	Hunter,	McComas,
Brown,	Inman,	Sweasey,
Caples,	Keyes,	Swenson,
Garvey,	Lampson,	Walker, of Tuolumne,
Gorman,	Mansfield,	Weller,
Grace,	Martin, of Santa Cruz,	Wilson, of Tehama,
Howard, of Mariposa,	McCallum,	Wyatt—21.

NOES.

Andrews,	Heiskell,	Rhodes,
Ayers,	Herold,	Ringgold,
Barbour,	Herrington,	Rolfe,
Beerstecher,	Holmes,	Schell,
Belcher,	Huestis,	Shafter,
Bell,	Jones,	Shurtleff,
Blackmer,	Joyce,	Smith, of 4th District,
Boggs,	Kelley,	Smith, of San Francisco,
Boucher,	Kenny,	Soule,
Burt,	Kleine,	Stedman,
Campbell,	Larkin,	Steele,
Casserly,	Larue,	Stevenson,
Chapman,	Lavigne,	Stuart,
Charles,	Lindow,	Swing,
Condon,	Martin, of Alameda,	Thompson,
Crouch,	McConnell,	Tinnin,
Davis,	McCoy,	Townsend,
Dean,	McNutt,	Tully,
Dowling,	Miller,	Tuttle,
Dunlap,	Mills,	Vacquerel,
Eagon,	Murphy,	Van Voorhies,
Edgerton,	Nason,	Waters,
Estee,	Nelson,	Webster,
Estey,	Neunaber,	Wellin,
Evey,	O'Sullivan,	West,
Farrell,	Porter,	Wickes,
Freeman,	Prouty,	White,
Freud,	Pulliam,	Wilson, of 1st District,
Hale,	Reed,	Winans,
Harrison,	Reynolds,	Mr. President—90.

MR. WILSON. Mr. President: I ask unanimous consent of the Convention to amend section seventeen by striking out "quarterly," and inserting "monthly."

THE PRESIDENT. By unanimous consent it can be done.

No objection was made.

MR. BIGGS. Mr. President: I send up a substitute for section twenty-four.

THE SECRETARY read:

"SEC. 24. No Judge of a Superior Court, nor of the Supreme Court, shall, after the first day of July, eighteen hundred and eighty, be allowed to draw or receive any monthly salary, unless they shall severally take and subscribe an affidavit, before an officer entitled to administer oaths, that no cause in his Court remains undecided that has been submitted for decision for the period of ninety days."

MR. BIGGS. Mr. President: The only change is to allow him to make the affidavit before any officer who can administer oaths.

REMARKS OF MR. BELCHER.

MR. BELCHER. Mr. President: I have very serious doubts about the amendment proposed here to section twenty-four operating advantageously. What we want to do here is to make as good a Constitution as possible, and avoid puting in bad provisions. It is true there have been some evils which this amendment seeks to correct. There have been some Judges in the State who have unnecessarily held cases. I have myself seen some of the evils of that in having cases held by Judges for a most unnecessary time; but I believe that there are not many Judges of that kind in the State. I believe that generally Judges of our District Courts decide their cases promptly, and as promptly as they are required to do by this section. The difficulty that I see is with the Supreme Court. Every Supreme Court Judge can decide a case, unless it be a most extraordinary one, inside of ninety days. Now, in the Supreme Court if you say that every one of these Judges shall make an affidavit that every case is decided, when the time approaches that this affidavit is made they will stop hearing cases, unless it is clear that they can decide them within the time. There are many reasons why this section should not be adopted, and it seems to me that it had better be stricken out. Mr. President: Would a motion to strike out the section be in order now.

THE PRESIDENT. Yes. It is in order, and will be the first question.

MR. BELCHER. I move that the section be stricken out.

MR. BIGGS. Mr. President: I am in hopes that motion will not prevail. I have stood by the report of the Judiciary Committee in favor of good salaries, and everything that they ask for. This is something that the people ask for. The gentleman well knows that District Judges have held cases under advisement for over two years. I ask, in God's name, if ninety days is not ample time for them to decide.

MR. FREEMAN. Mr. President: I trust that this section will not be stricken out. It attempts to provide a remedy which has long been needed. We can all understand that delays are dangerous, but there is still another reason for this section. Under this system of practice now prevailing in some of the Courts, while counsel are required to attend and argue the cases, they are taken under advisement and so kept until the arguments are entirely lost from the memories of the Judges. I have myself known instances in this district where the District Judge kept cases under advisement for three or four years, and went out of office without deciding them.

MR. HERRINGTON. Mr. President: It strikes me that if this Convention will be consistent with itself, that it will strike this section out. There is not enough delay to suit the convenience of those who desire to get compromises on either side. There is more time needed for the aristocracy of the community to oppress the poor in. There is more time required to effect the necessary compromise and the multiplication of appeals that are requisite to pile up expenses and compensate the counsel. You ought to be more consistent and strike out this section, and give a little more time for this class of oppression that you have heaped upon us by the adoption of this article. Now, I shall vote against striking it out, because I want not only justice administered at our door, but I want it done speedily and without the circumlocution of appeal after appeal, while the poor are ground to death beneath the heel of oppression. Under this system you have a rehearing in department and an appeal to Court in bank, and it may be detained until the Court sees fit to decide it three years hence. But be consistent with yourselves, and strike the section out.

MR. BARBOUR. Mr. President: The amendment proposed by the gentleman is good. The principle is a correct principle. Judges are public servants, and we ought to require of them the same kind of responsibility that we require from others. But I agree with the gentleman from Santa Clara, that in order to be consistent, the section should be stricken out. You have adopted the system here which invades the constitutional rights of the citizen. It conflicts with the Constitution of the United States of America, which grants to every man the protection of the law. You practically and virtually deny his right of appeal, except according to the sweet will of one man. You require him to take his chances of ever getting from the department into the Supreme Court of the United States, for a minority decision of your Supreme Court is not the final judgment of that Court of last resort pronounced by a majority of the Court. You have foisted that kind of a system upon us, and now to be consistent, the work should be finished, by denying to the citizen the right to demand of the Judge that the case shall be decided. I shall vote against striking out; but I submit, that in order to be consistent, those who adopted this system should strike out this section.

MR. EDGERTON. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend by striking out the words 'nor of the Supreme Court.'"

MR. EDGERTON. I am decidedly in favor of retaining that part which relates to the Supreme Court. I could relate instances in my own experience, and in the experience of other gentlemen, where cases were tried, and argued, and submitted three years ago, and are not decided to this day. As to the Supreme Court, I think it is becoming in me, at least, to follow the suggestion of Judge Belcher, of Yuba. He has been upon the Supreme bench, and has worked twelve, fifteen, and sixteen hours a day; whereas my friends on the right think that nobody ought to work over eight hours a day. Gentlemen must remember that there are hundreds of cases in that Court to be disposed of, and that it requires great care to fairly consider and digest the character of conclusion reached and put it in proper form. I hope the amendment I have sent up will prevail.

MR. MCCALLUM. Mr. President: I am in favor of the amendment offered by the gentleman from Butte, and I stand here to testify that it is equally important that it should apply to the Supreme Court as to the Superior Courts. In my personal experience I have known this to occur, that under the statute of this State, which provided that in cases of a contest for an election of Trustees of a corporation that summary judgment should be rendered, that on appeal of that case to the Supreme Court, after I had obtained judgment, about one year elapsed before I could get a remittitur. It is true that this proposition does not specifically cover the evil in that particular case, but this section ought to reach the Supreme Court. I confess that I much prefer the amendment which I offered to the article on distribution of powers which merely provided that the Legislature may prescribe the conditions. However, I hope that this amendment of the gentleman from Yuba will be adopted precisely as he presents it, and that the amendment of the gentleman from Sacramento will not be adopted as a qualification.

MR. SHAFTER. Mr. President: There may be some use in hurrying up the Superior Courts in this way, but it certainly should not apply to the Supreme Court. You are going to have seven members. Suppose one man should be incompetent to sit, and they hear the argument and are equally divided. What are you going to do? They cannot agree upon a decision. There may be matters of great importance involved. By and by, perhaps within six months, one Judge will be going off. Ought they not to wait until after that time for a reargument? It seems to me they ought to. What is the use of ordering a reargument in such instances when it can do no good? Many instances could be cited where this rule would not work well by any means. I hope that the amendment offered by the gentleman from Sacramento will be adopted, and the Supreme Court left out of this category.

Messrs. Murphy, Hunter, Dean, Larkin, and Lindow demanded the previous question, which was ordered by the Convention.

Upon the motion of Mr. Belcher the ayes and noes were demanded by Messrs. Biggs, Tinnin, Brown, Larkin, and Lindow.

The roll was called, and the motion to strike out was lost by the following vote:

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AYES.

Belcher,	McFarland,	Reed,
Casserly,	McNutt,	Reynolds,
Eagon,	Miller,	Rolfe,
Hale,	Murphy,	Shafter,
Jones,	O'Donnell,	Wilson, of 1st District,
Martin, of Santa Cruz,	Reddy,	Mr. President—18.

NOES.

Andrews,	Harrison,	O'Sullivan,
Ayers,	Harvey,	Prouty,
Barbour,	Heiskell,	Pulliam,
Barton,	Herold,	Rhodes,
Beerstecher,	Herrington,	Schomp,
Bell,	Hitchcock,	Shurtleff,
Biggs,	Howard, of Los Angeles,	Smith, of 4th District,
Blackmer,	Huestis,	Smith, of San Francisco,
Boggs,	Hunter,	Soule,
Brown,	Inman,	Stedman,
Burt,	Johnson,	Steele,
Campbell,	Joyce,	Stevenson,
Caples,	Kelly,	Sweasey,
Chapman,	Kenny,	Swenson,
Charles,	Kleine,	Swing,
Condon,	Lampson,	Thompson,
Cross,	Larkin,	Tinnin,
Crouch,	Larue,	Tully,
Davis,	Lavigne,	Tuttle,
Dean,	Lindow,	Vacquerel,
Dowling,	Mansfield,	Van Voorhies,
Dudley, of Solano,	McCallum,	Walker, of Tuolumne,
Edgerton,	McComas,	Waters,
Estee,	McConnell,	Webster,
Estey,	Mills,	Weller,
Farrell,	Moffat,	Wellin,
Filcher,	Moreland,	West,
Freeman,	Morse,	Wickes,
Freud,	Nason,	White,
Garvey,	Nelson,	Winans,
Gorman,	Neunaber,	Wyatt—95.
Grace,	Ohleyer,	

THE PRESIDENT. The question recurs on the amendment offered by the gentleman from Sacramento to the amendment offered by the gentleman from Butte.

The amendment to the amendment was rejected.

THE PRESIDENT. The question recurs on the amendment offered by the gentleman from Butte.

The amendment was adopted.

Messrs. Moreland, Waters, Lampson, Walker of Tuolumne, and Howard of Los Angeles, demanded the previous question, which was ordered by the Convention.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Ayers,	Howard, of Los Angeles,	Rhodes,
Barry,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Schell,
Belcher,	Inman,	Shafter,
Biggs,	Johnson,	Smith, of 4th District,
Blackmer,	Lampson,	Soule,
Boggs,	Larue,	Steele,
Brown,	Lavigne,	Stevenson,
Burt,	Lindow,	Sweasey,
Campbell,	Mansfield,	Swing,
Caples,	Martin, of Alameda,	Thompson,
Casserly,	Martin, of Santa Cruz,	Townsend,
Chapman,	McCallum,	Tully,
Charles,	McConnell,	Tuttle,
Davis,	McNutt,	Vacquerel,
Eagon,	Murphy,	Van Voorhies,
Edgerton,	Nason,	Walker, of Tuolumne,
Estee,	Neunaber,	Waters,
Estey,	O'Donnell.	Weller,
Freeman,	Ohleyer,	West,
Garvey,	Prouty,	Wickes,
Heiskell,	Pulliam,	Wilson, of Tehama,
Herold,	Reddy,	Wilson, of 1st District,
Hitchcock,	Reed,	Mr. President—74.
Holmes,	Reynolds,	

NOES.

Andrews,	Grace,	Moreland,
Barbour,	Hale,	Morse,
Barton,	Harrison,	Nelson,
Bell,	Harvey,	O'Sullivan,
Condon,	Herrington,	Schomp,
Cross,	Hunter,	Shurtleff,
Crouch,	Jones,	Smith, of San Francisco,
Dean,	Kelly,	Stedman,
Dowling,	Kenny,	Swenson,
Dudley, of Solano,	Keyes,	Tinnin,
Evey,	Kleine,	Webster,
Farrell,	Larkin,	Wellin,
Filcher,	McComas,	White,
Freud,	Mills,	Winans,
Gorman,	Moffat,	Wyatt—45.

PAIRED.—Mr. Boucher, aye, with Mr. Glascock, no; Mr. Mills, aye, with Mr. Turner, no.

MR. REYNOLDS [before the vote was announced]. I desire to change my vote from no to aye, for the purpose of moving a reconsideration.

RECONSIDERATION.

MR. MURPHY. Mr. President: I now move to reconsider the vote by which the Convention adopted the resolution offered by Mr. Huestis, providing for the appointment of a Committee on Address, which reads as follows: "*Resolved*, That the President of this Convention be requested to appoint, at an early day, a committee, to consist of one from each judicial district, whose duty it shall be to prepare an address to the people of this State, setting forth concisely the principal amendments proposed by this Convention to the present Constitution, and, as far as practicable, the reasons therefor; said address to be submitted to the Convention for action thereon before the promulgation." If the motion is reconsidered I shall offer a substitute.

MR. STEDMAN. Mr. President: I rise to a point of order. The notice of the gentleman reads as follows: "I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the resolution was adopted to-day, authorizing the appointment of a committee of nine to prepare an address to the people of this State, in relation to the new Constitution." My point of order is that no such resolution was adopted.

THE PRESIDENT. The point of order is not well taken.

MR. HUESTIS. Mr. President: I hope that this motion will not prevail. This Convention is certainly not desirous of earning the character of being vacillating. There is no kind of doubt but what a majority of the Convention are in favor of the resolution. The gentleman from Del Norte recognized the idea to the extent of offering a resolution himself or rather an amendment. His amendment did not meet the approbation of this House. It was voted down. The resolution that he wishes to reconsider was adopted, and I submit that the Convention ought not to recognize the gentleman's offer, to undo that which has been done, and thus prolong the session. I move that the motion be laid on the table.

RECESS.

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M. President Hoge in the chair.

Roll called and quorum present.

THE PRESIDENT. The question is on laying the motion to reconsider the resolutions in regard to an address on the table.

MR STEDMAN. Ayes and noes.

MR. HUESTIS. Ayes and noes.

THE PRESIDENT. No second.

Division was called for, and the motion to table prevailed, by a vote of 48 ayes to 37 noes.

REVENUE AND TAXATION.

THE PRESIDENT. The next business in order is the consideration of the article on revenue and taxation on second reading. The Secretary will read:

THE SECRETARY read the article, as follows:

ARTICLE —.

REVENUE AND TAXATION.

SECTION 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed; provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.

SEC. 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

SEC. 3. Every tract of land containing within its boundaries more than one Government section shall be assessed, for the purposes of taxation, by sections or fractional sections; and where the section lines have not been established by authority of the United States, the Assessor and County Surveyor shall establish the section lines, in conformity with the Government system of surveys, as nearly as practicable. Each section or fractional section shall be valued and assessed separately; and for the purpose of subdividing and assessing, the Assessor and Surveyor, and their assistants, may enter upon any land within their respective counties.

SEC. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such secur-

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ity; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

SEC. 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

SEC. 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

SEC. 9. A State Board of Equalization, consisting of one member from each Congressional district in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, whose term of office, after those first elected, shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of State taxation. The Controller of State shall be ex officio a member of said Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of county taxation; provided, said State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

SEC. 10. The franchise, roadway, roadbed, rails, and rolling stock of all railroads in this State, operated in more than one county, shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts, in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts; and all other property of railroads shall be assessed by the counties in which such property is situated.

SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner as shall be prescribed by law.

SEC. 12. The Legislature shall pass all laws necessary to carry out the provisions of this article.

THE PRESIDENT. The Chair will enforce the parliamentary rule that these sections will be called in their order, and gentlemen desiring to offer amendments can then do so. Amendments are in order to the first section.

MR. JOHNSON. Mr. President: I offer an amendment.

THE SECRETARY read:

"SECTION 1. All property in this State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property' is hereby declared to include moneys, credits, franchises, and all other matters and things capable of private ownership, real, personal, and mixed; provided, that growing crops, and such property as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation; but property of any county or municipal corporation, not situated within the limits of such county or corporation, shall be liable to local taxation in the county where situated. The word 'property' shall also include stocks, but stocks shall be taxed as hereafter provided in this article. The Legislature may authorize a deduction of debts, due to bona fide residents of this State, from credits, except in cases provided for in section four of this article."

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. President: Section one was passed by the Convention quite hastily. Different amendments were offered, but they found nothing to suit and adopted section one. Now, we are upon the eve of sending out our work to the people, and it is certainly desirable that it should not be crude and inharmonious, otherwise the people will soon find it out, the papers will soon discover the defect, and it will be brought forward in order to defeat the Constitution. I want to see section one so formulated that it will answer the purposes for which it was intended. Section one does not accord with our ideas exactly in regard to the definition of the word property. Now, section one says: "The word 'property,' as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership," etc. Will any gentleman here tell me that dues are not credits? I understand that when anything is due to me it is a credit in my favor. Therefore, it is not necessary to have the word dues in this section. Will any gentleman tell me that bonds are not credits? Whenever I hold these bonds they are credits in my favor, and no repetition of words meaning the same thing is necessary. The word bonds is included in the generic term credits. Then we come to stocks. What are stocks? They are not real estate; they are personal property, assignable by certificate, and whenever I hold them they are credits in my favor. Therefore, I maintain that the words bonds, stocks, and dues are covered by the word "credits," and are therefore superfluous. Here is another reason why they ought to go out. I find at the close of section one that the Legislature may authorize a deduction of debts from—what? debts from stocks, from bonds, from dues? It says from credits; then there is no deduction authorized from bonds, from stocks, from dues. That was not the intention of this Convention. The Convention intended that rebate to apply to all credits. They did not mean to say that it should not apply to stocks, bonds, and dues. Now, when the Assessor comes you say these stocks, bonds, and dues are credits, and I have a right to a rebate. No, says the Assessor, the Constitution draws a distinction between them, and does not treat them as credits, and you can have no deduction. I say, therefore, that this section does not convey the meaning of the Convention in that respect. Again, it does not harmonize with section four, because the words "contract or other obligation," which are found in section four, are not in section one. Also, it says "property used exclusively for public schools." Now these words are not necessary, because public school property is already included in the sentence, "property belonging to this State, or any municipality thereof." Now, if these things are eliminated it will reduce the section very materially. It will then read as follows:

"SECTION 1. All property in this State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word 'property' is hereby declared to include moneys, credits, franchises, and all other matters and things capable of private ownership, real, personal, and mixed; provided, that growing crops, and such property as may belong to the United States, this State, any county or municipal corporation within this State, shall be exempt from taxation; but property of any county or municipal corporation, not situated within the limits of such county or corporation, shall be liable to local taxation in the county where situated. The word 'property' shall also include stocks, but stocks shall be taxed as hereafter provided in this article. The Legislature may authorize a deduction of debts due to bona fide residents of this State from credits, except in cases provided for by section four of this article."

MR. EDGERTON. Mr. President: I offer an amendment.

THE SECRETARY read:

"Insert after the word 'taxation,' in line six, the following: 'but property of any county or municipal corporation not within the limits of said county or corporation, shall be subject to local taxation in the county where the same is situated.'"

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. President: I offer that amendment, and I am in favor of it. Now, the Spring Valley Waterworks are situated in San Mateo County, and constitute a very material part of the taxable property of that county. Propositions have been made from time to time pointing to the acquisition of these works by the City of San Francisco. Now, it does seem to me that the inhabitants of San Francisco, when they acquire and hold that property in the County of San Mateo, ought to pay the tax upon it. The burden rests upon the inhabitants of San Mateo County, while the people of San Francisco enjoy all the benefits. It seems to me wrong for one community to own and enjoy property at the expense of another community.

MR. MILLER. Mr. President: It is only necessary to state the case that the gentleman has stated to convince anybody that the amendment ought not to be adopted. It would work a great hardship. The County of San Mateo would derive the money for the support of their government from San Francisco. No public property should be taxed.

MR. MOFFAT. Mr. President: I am in favor of the proposition. This water company controls twenty-five thousand acres of land in San Mateo County, and are constantly acquiring more. Nearly all that land will be covered with water and used for the benefit of San Francisco. All that land will be exempt from taxation, which is unjust to the taxpayers of San Mateo County.

MR. ROLFE. Mr. President: Our cities and towns are, and probably always will be, authorized to hold and own ground for cemeteries outside of their town limits. That is perfectly proper. Under such an amendment as this they would have to pay taxes on these cemeteries. That is one instance in which it would work a wrong.

MR. MCCALLUM. Mr. President: This amendment proceeds upon a fundamental error. It assumes that the county is separate from the State. As to the necessity for it, there is no necessity for it; when we say all public property shall be exempt from taxation, that includes all property belonging to a county, city, or town. To say that one county shall tax another county, is to say that the State shall tax its own property. I do not see any likelihood of the purchase being made, as the gentleman suggests.

MR. EDGERTON. Mr. President: The State does not tax its own property, because that would simply be taking money out of one pocket and putting it into another. But this is a different case. Even the expenses of condemnation would have to be paid by the people of San Mateo County; the expenses of the Court, the witnesses, and all the officers, would have to be paid by them for the benefit of the people of San Francisco. There are twenty-five thousand acres of land necessary to those waterworks; and you might condemn half the county, and shift the burdens of taxation on to the other half, while citizens of San Francisco enjoy the benefits.

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REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. President: The gentleman says the expenses of condemnation must be paid by the County of San Mateo. I had supposed that the gentleman understood by this time that in a civil action the expenses are paid by the litigants.

MR. EDGERTON. Allow me——

MR. REYNOLDS. No, sir; in the language of the gentleman from Los Angeles, "Go away; go away." [Laughter.] Now, sir, the theory upon which this amendment proceeds is wrong, the gentleman to the contrary notwithstanding. No such thing can be found anywhere in the United States. Whoever heard of the different counties of the State of New York taxing the waterworks of that city, or anywhere else in the world? Who ever heard of such a thing? It is absurd. If the City of San Francisco ever condemns this property, she wants water and not land, any more than is necessary. If this could be done, the County of San Mateo might tax it to the tune of millions of dollars. There is scarcely any limit to its value. This land that is talked of belongs to the Spring Valley Water Company, who hold it for the purpose of monopolizing all the water in the country, and it is taxed to them. But there is no probability of San Francisco condemning all that land. There is no good reason for such an amendment as this, and I hope it will be voted down.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: This amendment, though it comes from Sacramento, really originated in San Mateo, hence is based on purely selfish reasons. I suppose the citizens of San Francisco, for the same selfish reasons can oppose it, and seek to avoid the burdens which it seeks to impose on them. Now, as already stated here, this is an entire novelty, and violates the common principles of taxation, that the Government never taxes itself, either as a whole, or in any integral part of it. Counties are simply subdivisions of the State for the convenience of local government, but they are a part of the general government of a State. Now, why is it that the State is permitted to own property here in Sacramento without paying taxes on it. Here is this capitol, and the grounds around it. Why not tax them for the benefit of Sacramento? It would not be taking money out of one pocket and putting into the other, according to the theory of the gentleman from Sacramento, because it would come out of the pockets of people all over the State, and go into the pockets of the people of Sacramento. Why should not the county of Marin tax the State Prison, and the counties of Napa and San Joaquin the asylums? It is exactly the same principle. The application is different, but the principle is exactly the same. San Francisco, as a subdivision of the State, may acquire the Spring Valley Waterworks. If she does, she ought not be subject to taxation, because it is a part of the State property. This amendment, if it should pass, would simply amount to a prohibition to San Francisco from purchasing that property. She never would purchase it under these circumstances. I have no idea that waterworks of New York or Boston, are taxed by the different counties in which they are situated. I know that such is not the case in regard to the waterworks in Washington. If there are any such instances in the United States I have never heard of them. It would be a violation of the fundamental principles of taxation that public property should be taxed. I hope therefore that the amendment will be rejected.

MR. LARKIN. I think the gentleman's argument from San Francisco is far fetched. The buildings of the State are State property, while the property of municipalities belong to only a portion of the people of the State. If the people of Sacramento saw fit to build a canal costing millions of dollars to bring water here, I think it ought to be taxed. I think the proposition is correct. It occupies an entirely different relation. They might engage in railroading, and should they be exempt from taxes throughout the State.

THE PRESIDENT. The question is on the adoption of the amendment of the gentleman from Sacramento, Mr. Edgerton.

Lost.

MR. MILLER. Mr. President: I offer the following amendment.

THE SECRETARY read:

"Strike out Johnson's amendment, and substitute the following: SECTION 1. Taxation shall be equal and uniform throughout the State. All property in the State not exempt under the laws of the United States, except growing crops, property belonging to the United States, this State, or to any county or municipal corporation thereof, shall be taxed in proportion to its value, to be ascertained as provided by law. Mortgages on real estate, credits, and franchises shall be considered property for the purposes of taxation. The Legislature may authorize a deduction from credits taxed, of debts due to bona fide residents of this State, except in the case of debts or obligations secured by mortgage or trust deed on real estate."

REMARKS OF MR. MILLER.

MR. MILLER. Mr. President: This proceeds upon the theory that the people of this State are pretty well satisfied with the system of taxation which now exists, with one or two exceptions—with the exception of mortgages, trust deeds, credits, and franchises. I think it has been pretty clearly demonstrated that it is the will of the people of this State that credits should be taxed, whether secured or unsecured, and also franchises. This amendment adopts the language of the old Constitution, with these exceptions; it also provides a system of rebate in the case of credits and debts. I do not believe that section one, as adopted, meets the approval of a majority of the people of this State; there are many things contained in it which had better be taken out. I offered it before but it was voted down; afterwards, many members who had voted against it, came to me and said they were sorry they had done so.

THE PRESIDENT. The question is upon the adoption of the amendment offered by the gentleman from San Francisco, General Miller.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: When this same amendment was offered before, I opposed it. The section which we adopted as section one, was adopted without due consideration; I remember the circumstances under which it was adopted. When the Convention was worn out, and prepared to take almost anything that was offered, the gentleman offered this amendment, and without being read more than once, it was adopted. The proposition offered by General Miller has some very strong features in its favor; one of them is, that taxation shall be equal and uniform; that was opposed before by some gentlemen who thought that at some future time it might be advisable to tax one class of industries higher than another; but in considering this subject, it appears to me that one class of property ought to be taxed at the same rate as another. Now, we have seen the evil already, for we have gone on and taxed much of the mining property in this State twice, while agricultural property has been taxed but once. Let me say that these gentlemen who think they are protecting the interests of poor men by refusing to say that taxation shall be equal and uniform, are making a very great mistake. Now, one industry should not be compelled to carry a burden that every other industry is not compelled to carry. I can see numerous reasons why this amendment is better than section one. There can be no room for construction so that mortgages shall escape taxation, for it expressly says that they shall be taxed. Section one is not clearly understood, and it is uncertain what the effect of it will really be. I am in favor of the amendment for these reasons.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: When this subject was before this body before General Miller proposed this amendment, proposing equality and uniformity of taxation, that doctrine was urged upon this body, but was rejected; probably because there existed a clause that taxation should be uniform upon certain classes of subjects. I endeavored at that time to point out the fallacy of such a proposition, but the Convention rejected it, and now, after having drifted far out into the dark, we are coming back again to the platform on which the State has rested for thirty years. I hope that we have learned a lesson, and that this proposition will be adopted.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. President: I am opposed to the amendment of the gentleman from San Francisco. It has been said that the words "equal and uniform" have been construed by the Courts. Do not gentlemen know that the construction has been that these words are an inhibition on the taxation of mortgages? I have here the decision of Judge McKinstry, in the fifty-first California, page two hundred and fifty-seven, and that decision goes to the effect that the taxation of mortgages is not consistent with the provision of equality and uniformity. That is why I object to these words here. No matter if we do say that mortgages shall be taxed, if we also say that taxation shall be equal and uniform, it leaves the question to be again raised, whether the taxation of credits is equal and uniform taxation. I am in favor of taxing all property, but I am not in favor of double taxation.

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

Seconded by Messrs. Barbour, Evey, Wilson, and Dunlap.

The Convention refused to order the main question.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I must say that I am very much surprised at the position taken by Mr. Cross, and I was unable to see upon what he based his position until he mentioned the word "stocks"—stocks! stocks! And that is exactly the difficulty with the gentleman. He does not desire to have stocks taxed, therefore he favors the amendment. Now, we have been discussing this matter for about two weeks. This equal and uniform business was before the Committee of the Whole and before the Convention, and was fully canvassed, and the Convention came to the conclusion that they were pernicious—that they were the cause of the Supreme Court deciding that the mortgage tax was unconstitutional.

MR. CROSS. Didn't you pledge yourself to support in this body the principle of rebate?

MR. BEERSTECHER. Yes, sir.

MR. CROSS. Is there any principle of rebate in this section?

MR. BEERSTECHER. Yes, sir; as I understand it.

MR. CROSS. Then you don't understand it.

MR. BEERSTECHER. That may be, as I have not the intellect that the gentleman has. I think it would be dangerous to lay down an absolute doctrine here that debts should be deducted from credits. I would leave that to the Legislature. If the law works bad they can repeal it. But in the Constitution it cannot be so easily changed. I hope that this Convention will not undo what it has done by allowing these words to be inserted. If we adopt these words we simply open the door for judicial construction which may, in the future as in the past, defeat the object of the Constitution.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: When this question was under consideration in the Committee of the Whole, I then took occasion to say that the words "equal and uniform" ought to remain in the Constitution, and I read from the decisions of the Supreme Court to show what the decisions had been. I read also from the same decision referred to by the gentleman from Shasta, the case of The People vs. The Hibernia Bank, and I attempted to show then, and I believe now, that it is the fact that the Supreme Court did not rest the question of the validity of the mortgage tax upon the words "equality and uniformity." Now, the amendment of the gentleman from San Francisco, General Miller,

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expressly provides that mortgages and credits shall be taxed, and then that there shall be a rebate. That provision for rebate takes the whole question out of the rule of that decision. The Board of Equalization, when they pass upon the value of mortgages, pass also upon the question of rebate. Therefore the arguments of these gentlemen have no application here. I think this Convention had better call a halt. I think I know what the public sentiment in this State is, and I believe the people are in favor of retaining these words in the Constitution; and they are in favor of it because these words mean something; because equal and uniform applies to every class of property and every class of taxpayers; because it is a protection, not alone to the rich, but to the poor. All property must be taxed at the same rate, so that every citizen must be equal before the law with every other citizen. It is well enough for gentlemen to get up here and recite the history of taxation in this State to show that a system of graduated taxation should be adopted. But that is a principle contrary to American doctrines, and contrary to the very first principles of justice. If you have a right to tax the rich man at a higher rate than the poor man, why, you have a right, if you get the power, to turn the tables and tax the poor man and let the rich man go untaxed. The true principle is to tax the dollar at so much wherever you find it. Tax every man's dollar alike. Make no discrimination. By adopting that rule you will commend your Constitution to the favorable consideration of the people of this State. I have yet to converse with any man in this State who has not denounced the proposition to strike out these words. Even those who are most strongly in favor of taxing mortgages are in favor of retaining these words. I hope the amendment will be adopted.

REMARKS OF MR. REDDY.

MR. REDDY. Mr. President: Are we to understand that it is the desire of this Convention to have a system of taxation that will be unequal, and not uniform? That seems to be the logical conclusion. It seems to me that every fair minded man ought to be satisfied with a tax that is equal and uniform. Then every man and every piece of property in the State is treated alike; then it is fair, and equal, and just. You say by striking out these words that taxation shall be unequal; that it is not desirable to have equal taxation; and yet, in this very same article we have provided for an expensive Board for the avowed purpose of making them equal. Why provide for a Board of Equalization in one section, and in another section say that we will not have equal taxation? That seems to me to be inconsistent. We have no use for a Board of Equalization if we refuse to insert these words. It seems that gentlemen fear to insert these words, because it may prohibit the Legislature from imposing double and treble taxation. That is the reason we are in favor of it, because we are opposed to double and treble taxation. Under the system we have adopted, they can tax one class of property at three per cent., and another class at fifty per cent., if they choose. It is a gross and uncalled for injustice. Under this you may take any special class of property and tax it out of existence. No fair minded man can insist upon any such thing as that.

REMARKS OF MR. DOWLING.

MR. DOWLING. Mr. President: Equal and uniform taxation will never satisfy the people of this State. We will always hear of the greatest distress; we will always hear of the grossest injustice, unless we have something besides equal and uniform taxation.

MR. REDDY. Do you desire that taxation shall be unequal?

MR. DOWLING. No, sir; every man must be taxed in proportion to his property. That is just.

MR. REDDY. Then why do you not say it must be equal?

MR. DOWLING. Because it can never be equal and be just. [Laughter.] It is impossible. Here is A, B, and C, each respectively. A has one acre, one thousand dollars; B has two acres, two thousand dollars; and C has three acres, or three thousand dollars' worth of property. It takes all A's property to support his family, while B has twice as much, and C three times as much. Now, B and C ought certainly to be taxed higher than A. There is no such thing as equal taxation, and just taxation. We have to have progressive taxation. How can you tax property when there is no such thing as property? If you have progressive taxation—that is, tax a man in proportion to what he is worth, in proportion to the property he has, then, sir, you have a just taxation. Because, if I am taxed for that which is absolutely necessary to support me, where does the tax come from? The thing is an absurdity. It must come out of my little capital stock; and if I take it out of my little capital stock, I might as well go to the poor house.

MR. CROSS. If we do not put these words in here, some future Legislature may tax small estates at higher rates than large estates.

MR. DOWLING. You are always clear headed in everything else, but I am sorry to say you are not on this question of taxation. I never heard of such an absurdity as taxing a man for what is absolutely necessary to support his family. You simply rob him. Mr. Edgerton, Mr. Wilson, and Mr. Biggs are three gentlemen (I suppose.) [Laughter.] Mr. Edgerton owns a thousand dollars worth of property, Mr. Wilson owns two thousand dollars worth——

MR. EDGERTON. You are mistaken. [Laughter.]

MR. DOWLING. And Mr. Biggs owns three thousand dollars worth. Now, it takes every cent Mr. Edgerton's property will bring to support his family, and if he has to pay the Government a dollar tax on that, in the name of reason where is the dollar coming from, unless he pays it out of the capital stock. Now, Mr. Wilson can support his family on the same amount, and he can better afford to pay ten dollars tax than Mr. Edgerton can one. Again, Mr. Biggs has three thousand dollars, and he can support his family on one thousand dollars. This illustrates the fallacy of equal and uniform taxation.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I do not know that I have any new argument to present. This question has been argued twice and rejected. I have heard no new reason why we should insert this in the Constitution, not a single new reason. I maintain that when you have said that all property in the State shall be taxed you have covered the ground. Now, sir, in establishing a system of taxation you have two things to take into consideration. One of them is: is the rule a wise one *per se;* and then, has the rule worked well in the past. The State has been working for thirty years under this proposed system, and this Convention assembled here is proof that it worked badly. That is all there is of it. Now, sir, is it proper, is it right, is it wise to insist on restoring the same rule against which the people rose up, and to correct which this Convention was called? Now, sir, I say we are not in favor of unequal taxation. It is a rebuttal of the statement that we are willing that all property should be taxed. The State should not be subjected to these constant quibbles, and to restore these words, will be to throw the whole article open to this quibbling. We have laid down a correct rule. We have said that all property should be taxed in proportion to its value, and that is enough. In addition to that we say that property which has heretofore been held not to be property shall, for the purposes of taxation, be deemed property and subject to taxation. That covers the ground. I hope this amendment will be voted down.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: Some members express surprise and astonishment at the gentleman from Sacramento; others express a degree of astonishment at the member from Nevada; some again, at the amendment which has been introduced by General Miller. Now, sir, I have long since learned not to be very much astonished at anything. Now, it appears that the great ocean of discussion which this body engaged in is to be presented over again. These matters were discussed, and discussed very extensively. Our conclusions are embodied in section one of this article. I am convinced that it expresses the average judgment of this body, and there is no use of any further discussion.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. President: If we can get ourselves right on this question we had better try and do it. There is no need for any lengthy discussion. We have talked these matters over and over again. Now, sir, it has been demonstrated beyond all question that the term "equality and uniformity" has not been the rock upon which previous laws have split; it had nothing to do with it. There is no man who can demonstrate that these words had anything to do with it. It was because a piece of property was taxed in one form, and then taxed in another form, that the Supreme Court has overridden the Legislature, and refused to allow property to be taxed twice. We are called upon to restore these words, "equal and uniform," which never ought to have been left out; and I am in hopes that the amendment will be adopted. I thought it was right before; I think it is right still. Leaving out those words is merely opening the way for graduated taxation. My friend from Nevada was right. The man who thinks he is benefiting the poor man by leaving out these words is mistaken. They are the poor man's shield. When a poor man sits down and says that inequality before the law shall be the rule, he is his own worst enemy. The reason why some of these gentlemen are voting against this amendment is, that they want to prepare the way for a system of graduated taxation; but I hope their purpose will be defeated.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. President: This is no new fight. It has been made on this floor time and time again. I can almost admire the pluck of the gentlemen who have been defeated time and time again; and still they come to the front ready to be defeated again, as they will be; because I warn them that the nigger in the fence was long since seen and discovered.

MR. CROSS. I object to the word "nigger." You should say a colored man in the fence.

MR. CAPLES. I am not fastidious, because we have something more important than color at this time. The gentlemen talk very nice and plausible about equal and uniform taxation, but I warn them that this talk is understood. These terms were used before to exempt property from taxation, and so they will be again; and that is the secret of their determination to get them into the new Constitution. We desire not only to reverse the Hibernia Bank decision, but we intend to put this section in such unmistakable language that no Court can ever misconstrue it, or interpret it to mean the exemption of any property from taxation, that these things shall not be exempt from taxation. We say that all property shall be taxed, and that it shall be taxed at its actual value, and that includes mortgages and solvent debts. What better form of words can you have? Does it not cover the ground? Why do they want any more? Simply because they believe that those words will open the question again to judicial interpretation, and serve their purpose to secure the exemption of certain kinds of property from taxation.

REMARKS OF MR. WELLER.

MR. WELLER. Mr. President: This question has taken up a good deal of time, and as long as it remains in its present condition I am willing it should take more time. I am ready to spend a good deal of time upon this question in order to have it right. It was the burden of taxation which certain classes were laboring under that caused this Convention to be called. These words "equal and uniform" have been in this Constitution nearly thirty years. They have been interpreted in various ways, and the last interpretation was that one class of people should bear the burden of taxation. The business men of the country, those who employ capital, employ labor, and develop the resources of the country, who are the life of the country, support this Government.

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That is the interpretation placed on these words by the Supreme Court of the State. There is one thing lost sight of, and that is that taxation is for the support of the Government which protects us. Now, during the past ten years, since this decision, the wealthy class of people have escaped taxation. They have held the offices, but they have borne no portion of the burdens of taxation. It has been borne by the industrial classes alone. If that is equality and uniformity we have had enough of it. I don't object to the term, but it is the interpretation. My theory is to tax everything in the hands of the man who owns it, and then let them take care of their own private business between themselves. Let them be taxed, but don't undertake to keep book accounts between every man and his creditors. In that way you will get a larger amount of property on the assessment roll, and the rate of taxation will be correspondingly smaller. I am opposed to the amendment, and I am opposed to allowing any rebates whatever.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. President: I shall not take much time in what I have to say. I have been an attentive listener to the debates here. I can make nothing else out of it than that the idea here is to inflict upon this State double taxation. Now, sir, why not tax things and not the representative of things? The very moment you depart from that principle of taxation you are all afloat; you are at sea. Now, take the case of depositors in our savings banks. They represent a very large class of citizens. Unlike the Chinese, their earnings return again to the avenues of commercial life, and help to develop the country. The aggregated wealth of these depositors is something enormous. The proposition now is to tax these depositors as follows: first, on their pass books; second, to tax the coin which they deposit; third, to tax the mortgage given as security when that money is loaned; fourth, to tax the land on which that mortgage is based. Now, sir, there are four distinct taxes which the depositor has to pay. I want to take this occasion to enter my solemn protest to anything of this kind. And you may depend upon it, this kind of taxation will not suit the justice-loving people of California. There are many other things I would like to say, but I know that the time is limited.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Ayers, Brown, Larkin, and Wyatt.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

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

The ayes and noes were demanded by Messrs. Miller, Wyatt, Grace, Lindow, and White.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Jones,	Rhodes,
Biggs,	Larue,	Schell,
Boggs,	Mansfield,	Schomp,
Boucher,	Martin, of Alameda,	Shafter,
Campbell,	Martin, of Santa Cruz,	Shoemaker,
Casserly,	McConnell,	Shurtleff,
Chapman,	McCoy,	Stevenson,
Charles,	McFarland,	Stuart,
Cross,	McNutt,	Thompson,
Crouch,	Miller,	Townsend,
Davis,	Mills,	Van Voorhies,
Edgerton,	Ohleyer,	Waters,
Estee,	Porter,	Wilson, of First District,
Hale,	Reddy,	Winans,
Hilborn,	Reed,	Mr. President—46.
Howard, of Mariposa,		

NOES.

Andrews,	Harvey,	O'Donnell,
Ayers,	Heiskell,	O'Sullivan,
Barbour,	Herold,	Pronty,
Barry,	Herrington,	Pulliam,
Barton,	Hitchcock,	Reynolds,
Beerstecher,	Holmes,	Ringgold,
Bell,	Howard, of Los Angeles,	Smith, of 4th District,
Blackmer,	Huestis,	Smith, of San Francisco,
Brown,	Hughey,	Soule,
Burt,	Hunter,	Stedman,
Caples,	Inman,	Steele,
Condon,	Johnson,	Sweasey,
Dean,	Joyce,	Swenson,
Dowling,	Kelley,	Swing,
Doyle,	Kenny,	Tinnin,
Dudley, of Solano,	Keyes,	Tully,
Dunlap,	Kleine,	Turner,
Eagon,	Lampson,	Tuttle,
Estey,	Larkin,	Vacquerel,
Evey,	Lavigne,	Walker, of Tuolumne,
Farrell,	Lindow,	Webster,
Filcher,	McCallum,	Weller,
Freeman,	McComas,	Wellin,
Freud,	Moffat,	West,
Garvey,	Moreland,	White,
Gorman,	Morse,	Wickes,
Grace,	Nason,	Wilson, of Tehama,
Hall,	Nelson,	Wyatt—86.
Harrison,	Neunaber,	

THE PRESIDENT. The question is upon the amendment of the gentleman from Sonoma, Mr. Johnson.

The ayes and noes were demanded by Messrs. Johnson, White, West, Lindow, and Wyatt.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Estey,	Rhodes,
Barry,	Garvey,	Rolfe,
Belcher,	Hale,	Schell,
Biggs,	Harvey,	Shafter,
Blackmer,	Inman,	Shurtleff,
Boggs,	Johnson,	Steele,
Boucher,	Martin, of Alameda,	Stevenson,
Burt,	Martin, of Santa Cruz,	Stuart,
Campbell,	McConnell,	Townsend,
Chapman,	McCoy,	Van Voorhies,
Charles,	McFarland,	Walker, of Tuolumne,
Cross,	McNutt,	Wilson, of Tehama,
Dudley, of Solano,	Miller,	Wilson, of 1st District,
Eagon,	Mills,	Winans—44.
Edgerton,	Reed,	

NOES.

Andrews,	Holmes,	Porter,
Barbour,	Howard, of Los Angeles,	Prouty,
Barton,	Howard, of Mariposa,	Pulliam,
Beerstecher,	Huestis,	Reddy,
Bell,	Hughey,	Reynolds,
Brown,	Hunter,	Ringgold,
Caples,	Jones,	Schomp,
Casserly,	Joyce,	Shoemaker,
Condon,	Kelley,	Smith, of 4th District,
Crouch,	Kenny,	Smith, of San Francisco,
Davis,	Keyes,	Soule,
Dean,	Kleine,	Stedman,
Dowling,	Lampson,	Sweasey,
Doyle,	Larkin,	Swenson,
Dunlap,	Larue,	Swing,
Estee,	Lavigne,	Thompson,
Evey,	Lindow,	Tinnin,
Farrell,	Mansfield,	Tully,
Filcher,	McCallum,	Turner,
Freeman,	McComas,	Tuttle,
Freud,	Moffat,	Vacquerel,
Gorman,	Moreland,	Webster,
Grace,	Morse,	Weller,
Hall,	Nason,	Wellin,
Harrison,	Nelson,	West,
Heiskell,	Neunaber,	White,
Herold,	O'Donnell,	Wickes,
Herrington,	Ohleyer,	Wyatt,
Hilborn,	O'Sullivan,	Mr. President—88.
Hitchcock,		

MR. REYNOLDS. Mr. President: A notice.

THE PRESIDENT. Out of order. Amendments to section two are in order.

MR. O'SULLIVAN. Mr. President: I offer an amendment to section two.

THE SECRETARY read:

"Amend section two, by adding, after the final word 'value,' the following: 'provided, however, that the Legislature shall provide a system of graduated taxation upon all large tracts of land owned by individuals or corporations.'"

MR. O'SULLIVAN. Mr. President: This is the only way to get out of the monopoly of land, which is acknowledged, on all hands, to be the curse of the State. Land monopoly is increasing, and the people are aroused to the importance of the subject, and are determined that it shall be abolished. The only way now that we have left is by a graduated system of taxation. I hope that this amendment will be adopted.

THE PREVIOUS QUESTION.

MR. EDGERTON. It is the same old thing. I move the previous question.

MR. CROSS. I thought you would move the previous question.

Seconded by Messrs. Inman, Casserly, Blackmer, and Wilson of Tehama.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the amendment.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Lindow, O'Sullivan, Grace, Sweasey, and Wickes.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Doyle,	Herrington,
Barbour,	Evey,	Hughey,
Barry,	Farrell,	Joyce,
Barton,	Freeman,	Kenny,
Beerstecher,	Freud,	Kleine,
Bell,	Garvey,	Lavigne,
Condon,	Gorman,	Lindow,
Cross,	Grace,	Mansfield,
Davis,	Harrison,	Nelson,
Dowling,	Herold,	Neunaber,

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O'Sullivan,	Sweasey,	Wellin,
Reynolds,	Swenson,	West,
Ringgold,	Thompson,	White,
Smith, of San Francisco,	Tuttie,	Wickes,
Soule,	Vacquerel,	Wyatt—46.
Stedman,		

NOES.

Andrews,	Howard, of Los Angeles,	Reddy,
Belcher,	Howard, of Mariposa,	Reed,
Biggs,	Huestis,	Rhodes,
Blackmer,	Hunter,	Rolfe,
Boggs,	Inman,	Schell,
Boucher,	Johnson,	Schomp,
Brown,	Jones,	Shafter,
Burt,	Kelley,	Shoemaker,
Campbell,	Keyes,	Shurtleff,
Caples,	Lampson,	Smith, of 4th District,
Casserly,	Larkin,	Steele,
Charles,	Larue,	Stevenson,
Crouch,	Martin, of Alameda,	Stuart,
Dean,	Martin, of Santa Cruz,	Swing,
Dudley, of Solano,	McCallum,	Tinnin,
Dunlap,	McComas,	Townsend,
Eagon,	McConnell,	Tully,
Edgerton,	McCoy,	Turner,
Estee,	McNutt,	Van Voorhies,
Estey,	Miller,	Walker, of Tuolumne,
Filcher,	Mills,	Waters,
Hale,	Moreland,	Webster,
Hall,	Morse,	Weller,
Harvey,	Nason,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wilson, of 1st District,
Hilborn,	Porter,	Winans,
Hitchcock,	Prouty,	Mr. President—83.
Holmes,	Pulliam,	

THE PRESIDENT. Amendments to section three are in order.

MR. CAPLES. Mr. President: I move to strike out section three. This section is entirely unnecessary, and it would cost five millions of dollars to carry it out. Take the case of the Sheldon grant here in this county; it is cut up into lots of eight hundred and forty acres each, made by private survey, running parallel with the river, northeast and southwest, the Government would cut these lines with acute angles, and it would be necessary, under this section, to survey each one of these separate lots. The section is utterly preposterous, and can never be carried out.

MR. EDGERTON. The same amendment and same argument, with the same result. I again demand the previous question.

ADJOURNMENT.

MR. HOWARD, of Los Angeles. I move we adjourn.

Carried.

And at five o'clock and twenty minutes P. M., the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND FIFTY-SECOND DAY.

SACRAMENTO, Wednesday, February 26th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Finney,	Lewis,
Berry,	Glascock,	Noel,
Cowden,	Gregg,	Overton,
Dudley, of San Joaquin,	Hager,	Terry,
Fawcett,	Laine,	Walker, of Marin.

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Mr. Walker, of Marin.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

So ordered.

PETITION.

MR. STEELE, from citizens of San Luis Obispo County, asking for the prohibition of the manufacture and sale of alcoholic liquors.

Laid on the table.

REPORT.

MR. AYERS, from the Committee on Reporting and Printing, reported as correctly engrossed the article on miscellaneous subjects.

REVENUE AND TAXATION—CONSIDERATION RESUMED.

THE PRESIDENT. The Convention will resume consideration of the article on revenue and taxation. The question is on the motion of the gentleman from Sacramento to strike out section thirty-four.

MR. FILCHER. I desire to move an amendment to strike out and insert.

THE SECRETARY read:

"SEC. 3. Every tract of land containing within its boundaries more than one Government section, and which has been surveyed by the United States Government, shall be assessed for the purposes of taxation by sections or fractions of sections. The Legislature shall provide by law for the assessment in small tracts of all lands not surveyed by the United States Government."

MR. FILCHER. Mr. President: In reference to the motion to strike out I will say this: I do not favor the section as it stands at present, for I believe it will prove a dangerous provision. But, sir, I do not think that where a proposition contains a good idea it should be stricken out without endeavoring to amend it.

THE PRESIDENT. The previous question was moved by the gentleman from Sacramento last night. The motion was pending and no vote taken upon it.

MR. ESTEE. I call for the previous question on this motion to strike out.

MR. EDGERTON. I ask leave to withdraw my motion for the purpose of offering an amendment. My impression is, that as that section now stands it will result in very serious complications, and vitiate any assessments in this State.

MR. FILCHER. I have the floor. I agree with the gentleman from Sacramento, that section three as it at present stands will prove pernicious. It would be hard to prove a constitutional assessment of this land. But, sir, as I before remarked, I do not think it becoming the part of the friends of this Constitution to stand up here and endeavor to strike out everything that does not exactly suit them. If there is a good idea contained in the section it is our duty to perfect it, and not strike it out because it contains one or two objectionable features. The idea that land should be assessed in small tracts is a good one. Take a large tract of land, and in going over it you may find a small valley of the very best character of land. The owner would point out the barren portion and say this is only worth one dollar and twenty-five cents an acre, while the rich portions may be worth twenty or thirty dollars an acre. I claim that we should provide for assessing these lands by small parcels. Now, if we say that they shall be assessed by Government sections, we know that there are large portions of the land that are not surveyed. The proposition I have sent up obviates the objection. It provides that all lands, so far as surveyed, shall be assessed by sections or fractions of sections, and that it shall be the duty of the Legislature to provide for assessing lands now unsurveyed in small tracts. I would like to have the gentleman from Sacramento look into the merits of the proposition. I believe it avoids the difficulties that are complained of, that it will stand the test, and prove beneficial.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. President: The section as it now stands in the article before the Convention, is substantially the section as it was originally introduced by Judge Fawcett. When the report of the Com-

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mittee on Revenue and Taxation was under consideration in Committee of the Whole, the section was stricken out and the substitute offered by the gentleman from Yolo, Mr. Reed, was adopted, as follows:

"SEC. 4. Every tract of land containing within its boundaries more than one Government section shall be assessed and valued, for the purposes of taxation, by sections or fractional sections, in such manner as the Legislature may by law provide."

Now, that is substantially the amendment, I think, of the gentleman from Placer. It was very thoroughly discussed in Committee of the Whole and adopted; but when the question came up before the Convention, upon a very elaborate discussion by the Convention, in which almost everybody who speaks at all upon the floor participated, that section, as offered by the gentleman from Yolo, was stricken out, and the original section adopted by the Convention, as it was offered by Judge Fawcett. Now, sir, about this matter of expense. I am informed that the cost of running these lines is about six dollars a mile. That is the prevailing price of making these surveys. The survey of a section would cost twenty-four dollars; and, in my judgment, the expense of these surveys, especially where you take into consideration that a large portion of the State is already surveyed, would be a mere bagatelle in comparison with the increased revenues that would be derived from the assessments on this plan. I am inclined to think that the section ought to be retained as it now stands in the report; and I hope that the Convention will vote down the amendments.

MR. HOWARD. Mr. President: I offer an amendment—to insert the words "without actual survey" in the sixth line. No actual survey is necessary. The whole thing can be done by reconnoisance.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. President: The object of this section is a good one, but there are so many technicalities that may arise under it, that I do not think it safe. If any of the revenue officers do not comply in every respect with the letter of the law, there is an opening for a contest, and perhaps an opportunity to get out of paying the taxes. That being the case, it is certainly very plain that the less technicalities we have the better. There are difficulties which might not occur to one's mind at first thought. For instance, there is a very large portion of the territory of the State of California in Spanish grants, over which the Government lines have never been extended.

MR. BLACKMER. I think it would be in order for this committee to be allowed to rise, report progress, and ask leave to sit again. It is impossible to hear what is going on.

THE PRESIDENT. The gentleman will suspend his remarks until the caucus adjourns.

MR. DUDLEY. I was saying that a very considerable portion of the State of California is occupied by Spanish grants, and many of them have been surveyed in irregular forms. Those lying along creeks, the lines have generally been extended from the creek to the back part of the grant, regardless of shape and regardless of direction; they may lie from southeast to northwest, or in any manner. If we put a clause in this Constitution that will require lands that were already divided up into small tracts and that lie in that shape, to be resurveyed on the Government lines, I think there is danger of opening a road whereby property will escape taxation.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. President: I endeavored to make something of a fight against this section when it was before the Committee of the Whole, and I will say now again, that I think a very brief analysis of this section will show that there are several insupportable objections to the section as it was adopted; that it is entirely impracticable, and impossible to carry it out were we to adopt it. My first objection to this section is this—but before mentioning my objections I desire to say that so far as the principle sought to be attained, or the assessment and valuation of property is concerned, I believe it is a good one, and I am in favor of it, but I do not desire to incorporate an inflexible rule in this Constitution which is entirely impracticable, and which can not be enforced. In the first place, it is not proper to say fractional sections. Now, the first proposition is, that all lands, that every tract of land containing within its borders more than six hundred and forty acres, shall be assessed by sections or fractional sections. Now, everybody that knows and understands the system of surveys adopted by the Government of the United States, knows that a fractional section simply means a tract of land which contains something more or less than six hundred and forty acres. Now, I suppose that the object sought, or intended to be embraced here was, sections, or legal subdivisions thereof. A legal subdivision is a half section or quarter section; I suppose that was the intention, and it should be changed to read: section or legal subdivision thereof.

In the next place it is asserted here by the distinguished gentleman from Sacramento that it would be a mere bagatelle to subdivide or sectionize the non-sectionized lands of this State. Now, sir, I am willing to take the Surveyor-General's office in this State, as equal in authority to the honorable gentleman from Sacramento county. That office informs me, and did inform me as late as yesterday, that to carry out the provisions of section four here in relation to the extension of the United States surveys over the unsurveyed lands, would not cost this State less than one million of dollars. There are well informed gentlemen who say that it will cost much more. I have been once a Deputy United States Surveyor myself, and think I know something of what I speak, and I do think that this State cannot possibly afford to adopt any such measure as that. Why, the gentleman from Marin, Judge Shafter, stated when this matter was up before, that to comply with the provisions of this section in his county alone, would cost not less than one hundred thousand dollars, and yet the gentleman from Sacramento says it will cost but a mere bagatelle. Now, sir, I am further informed, and I get it from the maps and records in the Surveyor-General's office, that there are nearly five hundred Mexican or Spanish grants in this State. When this matter was up before I think I demonstrated how impossible it was to make this section work in connection with those grants, and I will not repeat it now. It is preposterous. I think if gentlemen will consider the proposition they will see that it is impracticable.

REMARKS OF MR. JONES.

MR. JONES. Mr. President: I will detain the Convention but a very few minutes indeed. I wish to say, by way of shortening my own remarks, that, from some observation in regard to the public lands, surveyed and unsurveyed, I am satisfied that the views expressed by the gentleman from Stanislaus are sound and correct. My experience and observation is, that the posts of the Government surveys are not discernible to any man but a surveyor with his instruments in the field a very few years after they are set. No Assessor can go upon some of these tracts and assess any solitary section without another survey and marking of the corners. It might just as well never have been surveyed. There is a plat in the United States Land Office and notes may be had, but they would be utterly worthless to the Assessor. That the expense will be enormous cannot be disputed. I think if the Assessor wants to do his duty he can do so, generally. He can look over a tract of forty thousand acres, and can make a fair average of the value if he tries to. You cannot legislate honesty or conscience into the Assessors, whatever you may do in this Constitution, and so far as this hope is concerned we shall be utterly deceived and deluded.

MR. ESTEE. Mr. President: I think this question has been fully discussed. I move the previous question.

Messrs. Wyatt, Biggs, Eagon, and Edgerton also demanded the previous question, which was ordered by the Convention, on a division, by a vote of 64 ayes to 34 noes.

Upon the motion to strike out section three, the ayes and noes were demanded by Messrs. Larkin, Swenson, Morse, Kelley, and O'Sullivan.

The roll was called, and the motion to strike out was lost by the following vote:

AYES.

Andrews,	Huestis,	Reed,
Belcher,	Hunter,	Reynolds,
Biggs,	Jones,	Rhodes,
Boggs,	Kelley,	Ringgold,
Boucher,	Keyes,	Rolfe,
Caples,	Lampson,	Schell,
Crouch,	Larkin,	Schomp,
Dean,	Larue,	Shafter,
Dudley, of Solano,	Martin, of Alameda,	Shurtleff,
Eagon,	McCallum,	Stevenson,
Estee,	McConnell,	Swing,
Estey,	McNutt,	Thompson,
Garvey,	Mills,	Townsend,
Gorman,	Moffat,	Tully,
Graves,	Moreland,	Van Voorhies,
Hall,	Morse,	Walker, of Tuolumne,
Harvey,	Murphy,	Weller,
Heiskell,	Ohleyer,	Wilson, of Tehama,
Hitchcock,	Porter,	Wilson, of 1st District,
Holmes,	Reddy,	Wyatt—61.
Howard, of Mariposa.		

NOES.

Ayers,	Harrison,	Smith, of Santa Clara,
Barbour,	Herold,	Smith, of 4th District,
Barry,	Herrington,	Smith, of San Francisco,
Barton,	Hilborn,	Soule,
Beerstecher,	Howard, of Los Angeles,	Stedman,
Bell,	Hughey,	Steele,
Burt,	Inman,	Stuart,
Casserly,	Johnson,	Sweasey,
Chapman,	Joyce,	Swenson,
Condon,	Kenny,	Tinnin,
Cross,	Kleine,	Turner,
Davis,	Lavigne,	Tuttle,
Dowling,	Lindow,	Vacquerel,
Doyle,	Mansfield,	Van Dyke,
Edgerton,	Martin, of Santa Cruz,	Waters,
Evey,	McComas,	Webster,
Farrell,	McCoy,	Wellin,
Filcher,	Miller,	West,
Freeman,	Nason,	Wickes,
Freud,	Nelson,	White,
Grace,	Neunaber,	Winans,
Hale,	O'Sullivan,	Mr. President—66.

MR. HOWARD. Mr. President: I have read the amendment proposed by the gentleman from Placer, and I withdraw my amendment.

THE PRESIDENT. The question recurs on the adoption of the amendment offered by the gentleman from Placer, Mr. Filcher.

The amendment was adopted.

QUESTION OF PRIVILEGE.

MR. MCCALLUM. Mr. President: I desire to rise to a question of privilege, and I rise for the first time in my life to a question of privilege on a newspaper item. I read from the report of our proceedings in the San Francisco Call of the twenty-second instant, as follows: "An effort was made by McCallum to strike out the following declaration in section twenty-one, 'but no person convicted of the embezzlement or defalcation of the public funds of any State shall ever be eligible to any office of honor, trust, or profit, in this State.'" Although this was not intended,

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as I am assured by the gentleman who wrote it, it is none the less serious. It is entirely erroneous. The plain facts are, and they appear in the official Journal of this Convention, that I supported section twenty-one, which is also quoted in this article. Further, that I, with the rest of the legislative committee, unanimously recommended as one section of our report this section twenty-one, which properly reads as follows:

"SEC. 21. No person convicted of the embezzlement or defalcation of the public funds of this State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust or profit under this State, and the Legislature shall provide, by law, for the punishment of such embezzlement or defalcation as a felony."

In Committee of the Whole the word "any" before the word "State" was inserted in place of the word "this." In Convention I moved to restore the word "this," so that it would read as before, and, as the old Constitution now reads, and said that would relieve the section of a plain absurdity, because the Legislature, of course, could not, as provided in the last two lines, provide for the punishment of such embezzlement in any other State. Mr. Campbell and Mr. Edgerton themselves suggested that striking out the word such in the last line would relieve the section of its inconsistency. Instead of opposing the section, as I am reported, I supported it, and only assisted in correcting the section so as to make it plain and effective. Mr. President, I merely wish to make that correction, and by way of apology for rising to anything that may be said in a newspaper. I will say now, and here, that I fully recognize the right of private reporters to report what we do say, or not to report what we do say, but to report what we do not do or say is an entirely different matter. In this connection, perhaps, it is proper to say that I have no complaint personally to make against the gentlemen who claim to be the official reporters for not having reported anything I have said, since I made a speech against their proposition to lay the foundation for a claim upon the State treasury.

MR. GRACE. Who claim to be official reporters of the Convention?

MR. McCALLUM. The gentlemen in whose behalf a resolution was offered claiming that they were the official reporters of this Convention.

MR. GRACE. I do not understand that those gentlemen claim to be the official reporters of this Convention.

MR. McCALLUM. That was the effect of the resolution. I have no complaint against them for not having reported in their newspaper reports, even any amendment that I offer which has been the practice since that discussion the other day. I recognise these private gentlemen as having a right to leave out anything I say, but when it is offered or put out under the pretense that it is an official or impartial report, it is not true. Three weeks ago these reporters came to me with that resolution. I declined to support it, and was substantially informed that unless I did support it that I would have no favors from them.

Mr. CROSS. Mr. President: I rise to a point of order. The gentleman is out of order.

THE PRESIDENT. The question of privilege is evidently exhausted.

Messrs. Barbour, Biggs, Wyatt, Harrison, and O'Sullivan demanded the previous question on the adoption of the article.

The Convention refused to order the main question put, on a division, by a vote of 49 ayes to 55 noes.

MR. MORELAND. Mr. President: I move to strike out section four.

Messrs. Miller, Reddy, Hunter, Murphy, and Freeman demanded the previous question, which was ordered by the Convention.

Upon the motion to strike out section four, the ayes and noes were demanded by Messrs. Biggs, Dean, Freeman, Grace, and Hunter.

The roll was called, and the Convention refused to strike out section four by the following vote:

AYES.

Andrews,	Hunter,	Schomp,
Casserly,	Kelley,	Smith, of Santa Clara,
Dunlap,	Lampson,	Smith, of 4th District,
Eagon,	Larue,	Soule,
Garvey,	Martin, of Alameda,	Tinnin,
Graves,	Moreland,	Tully,
Hall,	Ohleyer,	Turner,
Heiskell,	Porter,	Walker, of Tuolumne,
Hitchcock,	Prouty,	Weller,
Holmes,	Rolfe,	Wyatt—31.
Howard, of Mariposa,		

NOES.

Barbour,	Estey,	Larkin,
Berry,	Evey,	Lavigne,
Barton,	Farrell,	Lindow,
Beerstecher,	Filcher,	Mansfield,
Belcher,	Freeman,	Martin, of Santa Cruz,
Bell,	Gorman,	McCallum,
Biggs,	Grace,	McComas,
Boggs,	Hale,	McConnell,
Boucher,	Harrison,	McFarland,
Burt,	Harvey,	McNutt,
Caples,	Herold,	Miller,
Chapman,	Hilborn,	Mills,
Condon,	Howard, of Los Angeles,	Moffat,
Cross,	Huestis,	Morse,
Crouch,	Hughey,	Murphy,
Davis,	Inman,	Nason,
Dean,	Johnson,	Nelson,
Dowling,	Jones,	Neunaber,
Doyle,	Joyce,	O'Donnell,
Dudley, of Solano,	Kenny,	O'Sullivan,
Edgerton,	Keyes,	Reddy,
Estee,	Kleine,	Reed,
Reynolds,	Swenson,	Webster,
Rhodes,	Swing,	Wellin,
Ringgold,	Thompson,	West,
Schell,	Townsend,	White,
Shafter,	Tuttle,	Wickes,
Shurtleff,	Vacquerel,	Wilson, of Tehama,
Smith, of San Francisco,	Van Dyke,	Wilson, of 1st District,
Stedman,	Van Voorhies,	Winans,
Stevenson,	Waters,	Mr. President—94.
Sweasey,		

Messrs. Estee, Reddy, Murphy, Tully, and Hilborn demanded the previous question on the adoption of the article.

The Convention refused to order the main question put.

MR. WYATT. Mr. President: I offer an amendment.

USURY LAW.

THE SECRETARY read:

"Add to section five, 'and any contract made or entered into in this State, whereby the lender shall directly or indirectly, by discount or otherwise, receive a greater interest than ten per centum per annum upon the dollar for the loan, use, hire, or forbearance for the payment of money, shall be null and void. This section shall be enforced by appropriate legislation.'"

MR. REYNOLDS. Mr. President: I rise to a point of order. The previous question was ordered.

THE PRESIDENT. The point of order is well taken.

MR. WYATT. Mr. President: The amendment which I offer is intended to express and represent the ideas of a very large majority of the people of the State of California, as I believe, upon the subject of not only regulating interest in this State, but for the purpose of having a usury law by which only so much interest for the loan, use, hire, or forbearance in the payment of money shall be prevented from being collected. At the present time we have an interest law which says that ten per centum shall be the interest upon money until it goes into judgment; after judgment the demand shall bear interest at the rate of seven per centum per annum; but we have no law which forbids the taking by contract of any amount of interest that may be contracted for. It is to prevent contracts for a higher rate of interest than ten per cent. that I offer this amendment. A provision of this character is found in all the States in this Union, probably with one or two exceptions. Right now it is being debated in the State of New York to reduce their interest from seven per centum to six per centum per annum. It has been called for by the political bodies of this State, and I would have preferred to have reduced the legal interest to seven per cent.; but believing that seven per cent. could not be carried, and that ten per cent. could be carried, and that that would be a step in the right direction, I propose this amendment. I hope that every man who caused his constituents to believe that he would go for something of this character will now support the proposition.

MR. EDGERTON. Mr. President: I rise to a point of order. The amendment is not germane to the section, and I am certain that there is some rule, though I do not recollect which one now, which prohibits this kind of an amendment.

THE PRESIDENT. Rule Twenty-eight. Under that rule, the Chair is of the opinion that this amendment is not in order. The Chair therefore decides the point of order well taken.

MR. McCALLUM. I move the previous question on the section.

MR. WYATT. With a view simply of getting a vote upon the question, I respectfully appeal from the decision of the Chair, and ask for the ayes and noes.

MR. EDGERTON. That would not be a vote upon the merits of the question. It would be merely a vote upon the correctness of the ruling.

MR. AYERS. I second the appeal.

The appeal was also seconded by Messrs. West and Evey.

THE PRESIDENT. Rule Twenty-eight reads: "No subject different from that under consideration shall be admitted under color of amendment." The fifth section is a mere provision by which the borrower on a mortgage shall not be compelled to pay the taxes on the money loaned. The amendment offered by the gentleman from Monterey has no connection with that section whatever, but is a general usury law introduced by way of amendment to this section, and the Chair decides that it is not in order under Rule Twenty-eight of the Convention. The gentleman takes an appeal. The question is: Shall the decision of the Chair stand as the judgment of the Convention?

MR. CROSS. Mr. President: I wish to say, that while it may appear that this is not germane to the subject of taxation, yet perhaps the declaration so often made upon this floor, that if you make the mortgage pay the tax it will increase the rate of interest, makes it germane to this section.

MR. EDGERTON. I am surprised that a gentleman of the intelligence of the gentleman from Nevada, should confound these two propositions. Is it possible that he can claim that a proposition providing for the raising of revenue, and the modes of assessment, has any connection whatever with the policy over usury law? They are as far apart as the poles. The proposition of the gentleman from Monterey is for a usury law, and the subject under consideration is revenue and taxation.

MR. WEST. Mr. President: I have seconded the appeal, not on account of any want of respect for the decision, but from a conviction that this clause would be legitimate and proper in this connection, and hoping that a vote of the Convention upon that appeal may be upon the merits of the question. This section five proposes to regulate matters of contract as between the money loaner and the borrower. The amendment offered by the gentleman on my left simply carries the idea of that section out to its legitimate consequence, and that is, that the lender is prohibited from including in his contract that he will raise the interest of the debtor, and compel the debtor to pay an exorbitant rate of inter-

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est. I hope the Convention will view it in that light, and that the vote will represent the views of the Convention upon the merits of the question.

MR. TULLY. Mr. President: I rise for the purpose of making a suggestion to the gentleman who offers the amendment. I am in favor of the amendment, and will support it in its proper place, but I think the ruling of the Chair is right, that this is not germane to the question now before the Convention. I ask the gentleman from Monterey to withdraw it and offer it as an original section under the head of miscellaneous subjects.

MR. McCALLUM. I desire simply to indorse that sentiment. I am one of the minority in favor of the proposition, but I will not vote against the decision of the Chair because I am in favor of the merits of the proposition.

MR. SCHELL. Mr. President: I maintain that the Chair is correct in its ruling on this proposition. This is simply an endeavor to fix a usury law upon the article on revenue and taxation.

MR. McCALLUM. Mr. President: I move to lay the appeal on the table.

MR. REYNOLDS. I make the point of order that the gentleman from Alameda made the motion while not in his seat.

THE PRESIDENT. The point of order is not well taken. The question is on the motion to lay the appeal on the table.

The ayes and noes were demanded by Messrs. Reynolds, Wyatt, Evey, West, and Wilson of Tehama.

The roll was called, and the appeal laid on the table by the following vote:

AYES.

Andrews,	Howard, of Mariposa,	Reddy,
Barton,	Huestis,	Reed,
Belcher,	Hughey,	Rhodes,
Biggs,	Hunter,	Ringgold,
Boggs,	Inman,	Rolfe,
Boucher,	Johnson,	Schell,
Brown,	Jones,	Schomp,
Burt,	Kelley,	Shafter,
Campbell,	Kenny,	Shurtleff,
Caples,	Keyes,	Smith, of Santa Clara,
Chapman,	Larue,	Smith, of 4th District,
Charles,	Lindow,	Soule,
Crouch,	Mansfield,	Steele,
Davis,	Martin, of Alameda,	Stevenson,
Dean,	Martin, of Santa Cruz,	Stuart,
Dudley, of Solano,	McCallum,	Sweasey,
Dunlap,	McComas,	Swing,
Eagon,	McConnell,	Thompson,
Edgerton,	McFarland,	Tinnin,
Estee,	McNutt,	Townsend,
Estey,	Mills,	Tully,
Freeman,	Moffat,	Tuttle,
Garvey,	Murphy,	Van Dyke,
Graves,	Nelson,	Van Voorhies,
Hall,	O'Donnell,	Walker, of Tuolumne,
Harvey,	Ohleyer,	Waters,
Heiskell,	O'Sullivan,	Webster,
Hilborn,	Porter,	Weller,
Hitchcock,	Prouty,	Wilson, of 1st District,
Holmes,	Pulliam,	Winans—90.

NOES.

Ayers,	Freud,	Reynolds,
Barbour,	Gorman,	Smith, of San Francisco,
Barry,	Grace,	Swenson,
Beerstecher,	Harrison,	Vacquerel,
Bell,	Herold,	Wellin,
Condon,	Herrington,	West,
Cross,	Joyce,	White,
Doyle,	Lavigne,	Wickes,
Evey,	McCoy,	Wilson, of Tehama,
Farrell,	Nason,	Wyatt—30.

PAIRED—Mr. Hale, aye, with Mr. Filcher, no.

MR. HERRINGTON. Mr. President: I offer an amendment to section seven.

THE SECRETARY read:

"Taxes shall be paid by installments, or otherwise, as the Legislature shall provide."

Messrs. Edgerton, Brown, Dean, Keyes, and Caples demanded the previous question, which was ordered by the Convention.

The amendment of Mr. Herrington was rejected.

MR. ROLFE. Mr. President: I offer an amendment to section nine.

EQUALIZATION.

THE SECRETARY read:

"Strike out the word 'county' where it first occurs in the eleventh line before the word 'taxation.'"

MR. ROLFE. Mr. President: The way this reads now, I think that this is an oversight, and that that word "county" got in there by a mistake of the committee, because here we have two Boards of Equalization. The State Board of Equalization is confined to equalizing for the purposes of State taxation, and the County Boards—this word "county" being in here—to county taxation; now, under this section, if the County Board of Equalization raises a man's property it can only apply to his county taxation. Therefore, if I own a farm which should be assessed at two thousand dollars, and which is really only assessed at one thousand dollars, and the County Board see the inequality, and after giving me notice, they raise the value of my farm to two thousand dollars, as it should be; now, unless the State Board also go through the formalities of raising that, I only pay taxes on one thousand dollars' worth of my farm for State purposes, while I would be required to pay taxes on two thousand dollars for county purposes. I think it was the evident intention of the Committee on Taxation, that if the County Board of Equalization acted in a legal manner on a certain assessment, and raised a man's assessment, that it should apply to his State tax too. Under our present system, if a man's property is raised from one thousand dollars to two thousand dollars, why, it raises it for all purposes, both State and county. Now, I think, so far as the County Board of Equalization is concerned, it should be allowed to remain just where it is now. If the County Board of Equalization raises the valuation of a man's property, it should apply to both county and State taxes; and then, of course, the State Board of Equalization has a supervisory control over the matter as regards State taxation. I call this to the attention of the Convention, and I think it was an oversight on leaving that word in there.

MR. EDGERTON. Mr. President: It seems to me that if the gentleman would look at the provision immediately following he will confess that his amendment and remarks are hypercriticism on the section. If it was not for the word "county," the County Board and the State Board would have a concurrent power under this section. That was thoroughly debated in the Committee of the Whole, and the Convention, by a decided vote, determined to have it stand as it is; and I now demand the previous question upon it.

MR. ESTEE. That word "county" ought to be stricken out. There is no doubt about it.

MR. VAN DYKE. There is no doubt about it.

Messrs. Edgerton, Brown, Caples, Biggs, and Barton demanded the previous question, which was ordered by the Convention.

The amendment of Mr. Rolfe was adopted.

MR. BARRY. Mr. President: I have an amendment to section ten.

THE SECRETARY read:

"Amend section ten by inserting after the word 'railroads,' in next to the last line, 'and municipal corporations.'"

MR. BARRY. Mr. President: The necessity of an amendment something like this, it seems to me, ought to be obvious to every member of the Convention. This amendment is pretty much of the same import as the one offered yesterday. If a county has a large amount of property situated within its limits it should derive the benefit of the taxes on that property.

MR. LARKIN. Mr. President: I rise to a point of order. The amendment is not pertinent to the section.

THE PRESIDENT. The point of order is well taken.

MR. DOWLING. Mr. President: I offer an amendment to be added to section ten.

THE SECRETARY read:

"And the property of any corporation, municipal or otherwise, not exempted by this Constitution, shall be taxed in the county in which the property is situated."

THE PRESIDENT. It is not in order.

INCOME TAX.

MR. MILLER. Mr. President: I move to strike out section eleven. We have now provided for the taxation of all property in the State according to its value. This article, if carried out, will subject every kind of property of every description to taxation. It is proposed here in section eleven to place it in the power of the Legislature to levy income taxes. If this should stand, with the taxation of property as provided in section one, it provides for a system of double taxation, which I think is unnecessary and not only unnecessary but unjust. If it were desirable to establish in this State a system of taxation of incomes, it should be restricted to certain classes of incomes. It might be restricted to the incomes of railroad corporations, banking associations, insurance companies, and institutions of that kind; but if you require the establishment of an income tax, there ought not to be a specific tax upon the property of persons paying the income tax, because if you do that you tax them twice, and they are bearing double burdens of taxation. My objection to this is that it is against all systems of income tax. It has been tried in the United States. It was unpopular with the people for the reason that it was impossible to so adjust the system as to make it equitable and just among the people. This section providing for an income tax was adopted here without much consideration and without much thought, and it simply provides for a system of double taxation upon the property of the people of this State. I am opposed to it.

MR. McCALLUM. Mr. President: I desire to offer an amendment, as a substitute for section eleven.

THE SECRETARY read:

"SEC. 11. The Legislature may provide for the assessment and collection of a tax upon incomes derived from investments in bonds, credits, stocks, dues, franchises, or any of them, and other like property, in lieu of a direct or ad valorem tax upon that class of property."

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. President: In order to offer an amendment to the section, it will be necessary to vote down the motion to strike out. I am not in favor of the section as it stands, for some of the reasons urged by the gentleman from San Francisco, General Miller. I have not heretofore taken any part in the discussion of the main feature of this report on revenue and taxation, and do not now propose to go farther than to state my position. I have always entertained the idea that property included what is called intangible property as well as tangible property. Under the old system in California taxes were paid upon credits and the like, and many of the older citizens have paid many a dollar, and many hundreds of dollars, on that species of property. I

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confess that I never changed my mind even after the decision of the Supreme Court reversing its own decision. Therefore, having been accustomed to that idea, I believe that the principle of section one is right. But at the same time I confess that practically it will result in too many cases in double taxation, and sometimes in triple taxation. I am inclined to think if this section eleven should stand just as it is, and the Legislature should act upon it, that there will be still a further taxation—you might say the possibility of quadruple taxation in some cases—as for instance in the case of stocks, in which the property itself is taxed, the capital stock is taxed, it is taxed in the hands of the parties, and then as income. I am satisfied that the theory of an income tax is the true theory with regard to all that class of intangible property, but the Constitution cannot provide the system. It requires the action of the legislature. The true theory of taxation is to tax the tangible property as such, and to reach intangible property through an income tax. At the same time I voted for section one in the absence of such a provision. Therefore I propose this substitute for section eleven. If this principle is right, it is necessary that it should be placed in the Constitution, because the legislature could not avoid this section one of the Constitution, which requires a direct tax, unless the Constitution so provides. This does not require the Legislature to do this thing, but it authorizes the Legislature to do this thing. Now, sir, as to the unpopularity of an income tax, I submit that it comes from taxing a man's labor or occupation. That is not just. Whatever may be his pursuit in life, the labor of his head, or hands, or both together, ought not to be taxed; but an income derived from property, and especially an income derived from investments from intangible property, which cannot be conveniently reached, even though you insert it in the law, I deny has ever been unpopular. I believe that such a scheme can be devised, and if it can it will result in a just system of taxation. This proposition, if adopted, can do no harm, possibly it may do much good.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: It is greatly to be hoped that the principle contained in this section shall not be departed from. All this talk about the unpopularity of an income tax is not based upon reliable data. The income tax imposed by the United States Government was unpopular, simply because the rate of tax imposed was enormous, as high as ten per cent.; and when the law was repealed it was merely repealed by one vote in the Senate, and the principle of an income tax was sustained by the best financial minds in the country. The report of Commissioner Wells also sustains the same principle. There is no iron-clad rule laid down in this section; it merely gives the authority to the Legislature to impose an income tax, and I presume the good sense of any Legislature which undertakes to deal with the subject, will select such interests and such classes and such people as should properly be brought under this system of taxation; and it will endeavor, I have no doubt, to avoid anything like double taxation. There are classes of people in this State, and their numbers are becoming very large, who afford no sustenance to the Government whatever, who own large fortunes and great revenues, and who are not paying any of the just proportion of their burdens to support the State. I think it would be the course of wisdom for us here to leave that enabling section in the Constitution, so that we may hereafter provide to make that class pay their just proportion of the Government dues.

Messrs. Murphy, Estee, Hunter, Reddy, and Dunlap, demanded the previous question, which was ordered by the Convention.

Upon the motion to strike out, the ayes and noes were demanded by Messrs. White, West, Burt, Ayers, and Wyatt.

The roll was called, and the Convention refused to strike out section eleven by the following vote:

AYES.

Biggs,	Jones,	Schell,
Boggs,	Kelley,	Shafter,
Boucher,	Lampson,	Shurtleff,
Casserly,	Larue,	Smith, of 4th District,
Chapman,	Martin, of Alameda,	Stevenson,
Charles,	Martin, of Santa Cruz,	Stuart,
Crouch,	McFarland,	Swing,
Dunlap,	Miller,	Townsend,
Eagon,	Mills,	Tully,
Freeman,	Murphy,	Turner,
Garvey,	O'Donnell,	Walker, of Tuolumne,
Graves,	Porter,	Waters,
Hall,	Pulliam,	Wilson, of 1st District,
Holmes,	Reddy,	Winans,
Hunter,	Reed,	Mr. President—47.
Johnson,	Rhodes,	

NOES.

Andrews,	Doyle,	Hilborn,
Ayers,	Dudley, of Solano,	Hitchcock,
Barbour,	Edgerton,	Howard, of Los Angeles,
Barry,	Estee,	Howard, of Mariposa,
Barton,	Estey,	Huestis,
Beerstecher,	Evey,	Hughey,
Bell,	Farrell,	Inman,
Blackmer,	Filcher,	Joyce,
Brown,	Freud,	Kenny,
Burt,	Gorman,	Keyes,
Caples,	Grace,	Larkin,
Condon,	Hale,	Lavigne,
Cross,	Harrison,	Lindow,
Davis,	Harvey,	McCallum,
Dean,	Heiskell,	McComas,
Dowling,	Herrington,	McConnell,
McNutt,	Rolfe,	Vacquerel,
Moffat,	Schomp,	Van Dyke,
Morse,	Smith, of Santa Clara,	Van Voorhies,
Nason,	Smith, of San Francisco,	Webster,
Nelson,	Soule,	Weller,
Neunaber,	Stedman,	Wellin,
Ohleyer,	Steele,	West,
O'Sullivan,	Sweasey,	White,
Prouty,	Swenson,	Wickes,
Reynolds,	Thompson,	Wilson, of Tehama,
Ringgold,	Tuttle,	Wyatt—81.

Upon the adoption of the amendment of Mr. McCallum, the ayes and noes were demanded by Messrs. McCallum, Howard of Los Angeles, Lampson, West, and Nason.

The roll was called, and the amendment rejected by the following vote:

AYES.

Beerstecher,	Johnson,	Rhodes,
Belcher,	Keyes,	Smith, of Santa Clara,
Blackmer,	Lampson,	Stevenson,
Brown,	Larue,	Tuttle,
Caples,	Martin, of Alameda,	Van Dyke,
Dudley, of Solano,	Martin, of Santa Cruz,	Walker, of Tuolumne,
Edgerton,	McCallum,	Weller,
Herrington,	Mills,	Wilson, of Tehama,
Hitchcock,	Moffat,	Wilson, of 1st District,
Holmes,	Ohleyer,	Winans,
Howard, of Los Angeles,	Reed,	Mr. President—34.
Howard, of Mariposa,		

NOES.

Andrews,	Hall,	Pulliam,
Ayers,	Harrison,	Reddy,
Barbour,	Harvey,	Reynolds,
Barry,	Heiskell,	Ringgold,
Barton,	Herold,	Rolfe,
Bell,	Hilborn,	Schell,
Biggs,	Huestis,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Inman,	Shurtleff,
Burt,	Jones,	Smith, of 4th District,
Casserly,	Joyce,	Smith, of San Francisco,
Chapman,	Kelley,	Soule,
Charles,	Kenny,	Stedman,
Condon,	Kleine,	Steele,
Cross,	Larkin,	Stuart,
Crouch,	Lavigne,	Sweasey,
Davis,	Lindow,	Swenson,
Dowling,	McComas,	Thompson,
Doyle,	McConnell,	Townsend,
Dunlap,	McFarland,	Tully,
Eagon,	McNutt,	Turner,
Estee,	Miller,	Vacquerel,
Estey,	Moreland,	Van Voorhies,
Evey,	Murphy,	Waters,
Farrell,	Nason,	Webster,
Filcher,	Neunaber,	Wellin,
Freeman,	O'Donnell,	West,
Freud,	O'Sullivan,	White,
Garvey,	Porter,	Wickes,
Grace,	Prouty,	Wyatt—91.
Hale,		

MR. VAN DYKE. Mr. President: I move to strike out section twelve. It is unnecessary and simply lumbering up the article.

MR. WYATT. I second the motion.

The motion was lost.

POLL TAX.

MR. PROUTY. Mr. President: I send up an amendment.

THE SECRETARY read:

"SEC. —. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund."

MR. PROUTY. Mr. President: This section was pretty fully discussed in Committee of the Whole, and was finally stricken out; but I would like to have the ayes and noes on it.

Upon the adoption of the section, the ayes and noes were also demanded by Messrs. Estee, West, McConnell, and Hitchcock.

Messrs. Wilson, Wyatt, Blackmer, Jones, and Inman demanded the previous question, which was ordered by the Convention.

The roll was called, and the amendment adopted by the following vote:

AYES.

Barry,	Charles,	Heiskell,
Belcher,	Crouch,	Hitchcock,
Biggs,	Dean.	Holmes,
Blackmer,	Dudley, of Solano,	Howard, of Los Angeles,
Boggs,	Dunlap,	Huestis,
Boucher,	Estee,	Inman,
Brown,	Estey,	Johnson,
Burt,	Garvey,	Kelley,
Caples,	Graves,	Keyes,
Casserly,	Hall,	Lampson,
Chapman,	Harvey,	Larue,

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Martin, of Alameda,	Porter,	Stuart,
Martin, of Santa Cruz,	Prouty,	Thompson,
McComas,	Pulliam,	Townsend,
McConnell,	Reddy,	Tuttle,
McFarland,	Reed,	Vacquerel,
McNutt,	Rhodes,	Van Dyke,
Miller,	Ringgold,	Van Voorhies,
Mills,	Schell,	Webster,
Moffat,	Schomp,	Weller,
Moreland,	Shafter,	Wilson, of Tehama,
Morse,	Shurtleff,	Wilson, of 1st District,
Murphy,	Smith, of Santa Clara,	Winans,
Nason,	Steele,	Mr. President—74.
Ohleyer,	Stevenson,	

NOES.

Andrews,	Hale,	Reynolds,
Ayers,	Harrison,	Rolfe,
Barbour,	Herold,	Smith, of San Francisco,
Barton,	Herrington,	Soule,
Beerstecher,	Hilborn,	Stedman,
Bell,	Hunter,	Sweasey,
Condon,	Jones,	Swenson,
Cross,	Joyce,	Swing,
Davis,	Kenny,	Tully,
Dowling,	Kleine,	Turner,
Doyle,	Larkin,	Walker, of Tuolumne,
Evey,	Lavigne,	Waters,
Farrell,	Lindow,	Wellin,
Filcher,	McCallum,	West,
Freeman,	Nelson,	White,
Freud,	Neunaber,	Wickes,
Gorman,	O'Donnell,	Wyatt—53.
Grace,	O'Sullivan,	

PAIRED—Mr. Edgerton, aye, with Mr. Smith of Fourth District, no.

Messrs. Wyatt, McComas, Weller, Hunter, and Dean demanded the previous question, which was ordered by the Convention.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Howard, of Los Angeles,	Prouty,
Ayers,	Huestis,	Rhodes,
Barbour,	Hunter,	Smith, of Santa Clara,
Barry,	Inman,	Soule,
Barton,	Johnson,	Stedman,
Bell,	Jones,	Steele,
Biggs,	Keyes,	Stevenson,
Blackmer,	Kleine,	Stuart,
Boggs,	Lampson,	Sweasey,
Boucher,	Larkin,	Swenson,
Brown,	Larue,	Swing,
Burt,	Lavigne,	Thompson,
Chapman,	Lindow,	Townsend,
Charles,	Martin, of Santa Cruz,	Tully,
Condon,	McCallum,	Tuttle,
Davis,	McComas,	Vacquerel,
Dean,	McConnell,	Van Dyke,
Doyle,	McNutt,	Van Voorhies,
Estey,	Moffat,	Waters,
Evey,	Moreland,	Webster,
Farrell,	Morse,	Wellin,
Filcher,	Murphy,	West,
Hale,	Nason,	White,
Harrison,	Neunaber,	Wickes,
Harvey,	O'Donnell,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wyatt,
Herold,	O'Sullivan,	Mr. President—81.

NOES.

Beerstecher,	Grace,	Pulliam,
Belcher,	Graves,	Reddy,
Caples,	Hall,	Reed,
Casserly,	Herrington,	Reynolds,
Cross,	Hilborn,	Rolfe,
Crouch,	Hitchcock,	Schell,
Dowling,	Holmes,	Schomp,
Dudley, of Solano,	Joyce,	Shafter,
Dunlap,	Kelley,	Shurtleff,
Eagon,	Kenny,	Smith, of San Francisco,
Edgerton,	Martin, of Alameda,	Turner,
Estee,	McFarland,	Walker, of Tuolumne,
Freeman,	Miller,	Weller,
Freud,	Mills,	Wilson, of 1st District,
Garvey,	Nelson,	Winans—47.
Gorman,	Porter,	

The article was referred to the Committee on Revision and Adjustment.

RECESS.

The hour having arrived, the Convention took a recess till two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M. President Hoge in the chair.

Roll called and quorum present.

WATER AND WATER RIGHTS.

THE PRESIDENT. The next business in order is the consideration of the article on water and water rights, on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —.

WATER AND WATER RIGHTS.

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; provided, that the rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water-rates, where necessary, within such time, shall be subject to peremptory process, to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation, collecting water-rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation, to the city and county, or city or town where the same are collected, for the public use.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

MR. WATERS. Mr. President: I offer an amendment to section one.

THE SECRETARY read:

"Insert in line three, after the word 'use,' the words 'in so far as the public has an interest in such use.'"

MR. WATERS. Mr. President: The whole theory of this thing proceeds to regulate water rights in which the public have an interest, to wit: those water rights where the water was appropriated for the purpose of supplying cities and towns with water. But unfortunately it includes all water rights, whether quasi-public or private. I don't think it is necessary to say that the use of all water is a public use. I don't believe it is right. I demand the ayes and noes.

THE PREVIOUS QUESTION.

MR. WYATT. Mr. President: I move the previous question on the amendment.

Seconded by Messrs. West, Stedman, Barton, and Waters.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

The ayes and noes were demanded by Messrs. Waters, West, Condon, Wyatt, and Evey.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Keyes,	Rhodes,
Biggs,	Mansfield,	Rolfe,
Boggs,	Martin, of Santa Cruz,	Schell,
Boucher,	McCoy,	Shafter,
Brown,	McFarland,	Shoemaker,
Caples,	McNutt,	Shurtleff,
Casserly,	Miller,	Smith, of Santa Clara,
Chapman,	Mills,	Steele,
Charles,	Moreland,	Stevenson,
Dudley, of Solano,	Morse,	Stuart,
Eagon,	Murphy,	Swing,
Edgerton,	O'Donnell,	Thompson,
Graves,	Ohleyer,	Tully,
Hall,	Porter,	Van Voorhies,
Harvey,	Prouty,	Walker, of Tuolumne,
Howard, of Los Angeles,	Pulliam,	Waters,
Hunter,	Reddy,	Weller,
Jones,	Reed,	Mr. President—54.

NOES.

Andrews,	Freud,	Kenny,
Barbour,	Garvey,	Lampson,
Barry,	Gorman,	Larkin,
Barton,	Grace,	Lavigne,
Beerstecher,	Hale,	Lindow,
Bell,	Harrison,	Martin, of Alameda,
Blackmer,	Heiskell,	McCallum,
Burt,	Herold,	McComas,
Condon,	Herrington,	McConnell,
Crouch,	Hilborn,	Moffat,
Dean,	Hitchcock,	Nason,
Dowling,	Holmes,	Nelson,
Doyle,	Howard, of Mariposa,	Neunaber,
Estee,	Huestis,	O'Sullivan,
Evey,	Inman,	Reynolds,
Farrell,	Johnson,	Schomp,
Filcher,	Joyce,	Smith, of 4th District,

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Smith, of San Francisco,	Tuttle,	West,
Stedman,	Vacquerel,	White,
Sweasey,	Van Dyke,	Wilson, of Tehama,
Swenson,	Webster,	Winans,
Tinnin,	Wellin,	Wyatt—67.
Turner,		

THE PREVIOUS QUESTION.

MR. CONDON. Mr. President: I move the previous question on the article.

Seconded by Messrs. Barbour, Beerstecher, Herrington, and West.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is: Shall this article be adopted as a part of the Constitution? The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Ayers,	Gorman,	Moreland,
Barbour,	Hale,	Morse,
Barry,	Harrison,	Nason,
Barton,	Harvey,	Nelson,
Beerstecher,	Heiskell,	Neunaber,
Belcher,	Herold,	O'Donnell,
Bell,	Herrington,	Ohleyer,
Biggs,	Hilborn,	O'Sullivan,
Blackmer,	Holmes,	Reynolds,
Boggs,	Howard, of Los Angeles,	Ringgold,
Boucher,	Howard, of Mariposa,	Schell,
Burt,	Huestis,	Smith, of Santa Clara,
Caples,	Hunter,	Smith, of 4th District,
Chapman,	Inman,	Smith, of San Francisco,
Charles,	Johnson,	Stedman,
Condon,	Joyce,	Steele,
Cross,	Kenny,	Sweasey,
Crouch,	Lampson,	Swenson,
Davis,	Larkin,	Tuttle,
Dean,	Lavigne,	Vacquerel,
Dowling,	Lindow,	Van Dyke,
Doyle,	Mansfield,	Van Voorhies,
Dudley, of Solano,	Martin, of Alameda,	Webster,
Estee,	Martin, of Santa Cruz,	Weller,
Evey,	McCallum,	Wellin,
Farrell,	McComas,	West,
Filcher,	McConnell,	White,
Freud,	McNutt,	Wilson, of Tehama,
Garvey,	Moffat,	Wyatt—87.

NOES.

Andrews,	McFarland,	Stevenson,
Brown,	Mills,	Stuart,
Casserly,	Murphy,	Swing,
Eagon,	Porter,	Thompson,
Edgerton,	Prouty,	Tinnin,
Grace,	Pulliam,	Tully,
Graves,	Reddy,	Turner,
Hall,	Reed,	Walker, of Tuolumne,
Hitchcock,	Rhodes,	Waters,
Jones,	Schomp,	Wilson, of 1st District,
Kelley,	Shoemaker,	Winans,
Keyes,	Shurtleff,	Mr. President—37.
McCoy,		

Referred to the Committee on Revision and Adjustment.

EDUCATION.

THE PRESIDENT. The next business in order is the consideration of the article on education, on second reading. The Secretary will read:

THE SECRETARY read the article, as follows:

ARTICLE —.

EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 2. A Superintendent of Public Instruction shall, at the first gubernatorial election after the adoption of this Constitution, and every four years thereafter, be elected by the qualified voters of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday of January next after his election.

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified voters thereof at the first gubernatorial election, and every four years thereafter; provided, that the Legislature may authorize two or more counties to unite and elect one Superintendent for all the counties so uniting.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be or may have been sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or have been granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year after the first year in which a school has been established.

SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund and the State school tax shall be applied exclusively to the support of primary and grammar schools.

SEC. 7. The local Boards of Education, and the Boards of Supervisors, and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers, and the granting of teachers' certificates within their several jurisdictions.

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools: nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

SEC. 9. The University of California is hereby declared to be a perpetual institution of this State, organized to administer a great public trust, and the Legislature shall have no power to impair or divert any gift, grant, or donation made to it, from the purposes or objects of those making such gift, grant, or donation. Its officers shall hold office for such time as the Legislature may prescribe. Instruction shall be therein given, in addition to other matters, in agriculture, metallurgy, the mechanic arts, and applied sciences. It shall be entirely independent of all political and sectarian influences.

THE PREVIOUS QUESTION.

MR. STEDMAN. Mr. President: I move the previous question on the article.

Seconded by Messrs. Larkin, Barbour, Grace, and Farrell.

THE PRESIDENT. The question is: Shall the main question be now put?

The ayes and noes were demanded by Messrs. Beerstecher, Grace, Doyle, O'Sullivan, and Lindow.

The roll was called, and the Convention refused to order the main question by the following vote:

AYES.

Andrews,	Grace,	Pulliam,
Barbour,	Heiskell,	Reynolds,
Barton,	Herold,	Smith, of 4th District,
Beerstecher,	Hunter,	Smith, of San Francisco,
Bell,	Keyes,	Stedman,
Boucher,	Lindow,	Sweasey,
Condon,	Moreland,	Swenson,
Doyle,	Nelson,	Vacquerel,
Evey,	O'Donnell,	West,
Farrell,	Ohleyer,	White,
Filcher,	O'Sullivan,	Wyatt—34.
Gorman,		

NOES.

Ayers,	Hitchcock,	Ringgold,
Barry,	Holmes,	Schomp,
Belcher,	Howard, of Los Angeles,	Shafter,
Biggs,	Huestis,	Shoemaker,
Blackmer,	Hughey,	Shurtleff,
Boggs,	Inman,	Smith, of Santa Clara,
Brown,	Johnson,	Soule,
Burt,	Jones,	Steele,
Caples,	Joyce,	Stevenson,
Casserly,	Lampson,	Stuart,
Chapman,	Larue,	Swing,
Charles,	Mansfield,	Thompson,
Cross,	Martin, of Santa Cruz,	Tinnin,
Crouch,	McCallum,	Tully,
Davis,	McComas,	Turner,
Dean,	McConnell,	Tuttle,
Dudley, of Solano,	McCoy,	Van Dyke,
Eagon,	McFarland,	Van Voorhies,
Edgerton,	McNutt,	Walker, of Tuolumne,
Estee,	Miller,	Waters,
Freud,	Mills,	Webster,
Garvey,	Moffat,	Weller,
Graves,	Morse,	Wellin,
Hale,	Murphy,	Wickes,
Hall,	Nason,	Wilson, of Tehama,
Harrison,	Porter,	Wilson, of 1st District,
Harvey,	Prouty,	Winans,
Herrington,	Reed,	Mr. President—86.
Hilborn,	Rhodes,	

THE PRESIDENT. Amendments are in order to section one.

MR. MCFARLAND. I offer an amendment to section one.

THE SECRETARY read:

"Strike out 'and agricultural,' in line four, and insert 'and' before 'moral,' in said line."

MR. MCFARLAND. The whole section refers to individuals—to

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human beings, and not to land. It is nonsense to talk of the moral and agricultural improvement of the people.

MR. WINANS. Mr. President: These words were not reported originally by the committee, but were interjected as an amendment by the Committee of the Whole. Therefore, if there be any defect in the grammar, it is the fault of the Committee of the Whole. I have no objection to the motion to strike out.

The motion to strike out was lost.

THE PRESIDENT. Amendments to section two are in order.

No amendment.

Sections three and four were called, and no amendments offered.

MR. LAVIGNE. Mr. President: I offer an amendment to section five.

THE SECRETARY read:

"Amend section five by adding to the section the following: 'and it shall be the duty of the Legislature to provide for a system of compulsory education for all children under the age of fourteen years.'"

MR. BLACKMER. The Legislature has that power now.

The amendment was rejected.

MR. LARKIN. Mr. President: I move to strike out section six.

THE PRESIDENT. The question is on the motion to strike out.

MR. LARKIN. Mr. President: The Convention struck out the amended section of the Committee of the Whole. Now, in order to harmonize the balance of this article the section ought to be struck out. Leave it to the Legislature to determine what common schools are. Section four reads as follows:

"SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be or may have been sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted or have been granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State, subject to the provisions of section six of this article."

Section six reads as follows:

"SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of primary and grammar schools."

Now there is a conflict between the sections.

MR. WINANS. Mr. President: The presence of that section is desirable in order to insure perfect harmony in the article. It is in no respect inconsistent with the provisions of section four, as it simply declares what common schools are. It ought to remain.

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Grace, Condon, Keyes, and Wyatt.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the motion to strike out section six.

The ayes and noes were demanded by Messrs. Blackmer, Larkin, Brown, Nason, and White.

The roll was called, and the Convention refused to strike out by the following vote:

AYES.

Barry,	Harrison,	O'Sullivan,
Beerstecher,	Heiskell,	Shafter,
Bell,	Herold,	Smith, of San Francisco,
Boggs,	Herrington,	Sweasey,
Boucher,	Hitchcock,	Swenson,
Caples,	Holmes,	Tinnin,
Condon,	Hunter,	Tully,
Crouch,	Jones,	Turner,
Dean,	Joyce,	Tuttle,
Dowling,	Kenny,	Walker, of Tuolumne,
Doyle,	Keyes,	Weller,
Evey,	Kleine,	Wellin,
Farrell,	Larkin,	West,
Gorman,	Martin, of Santa Cruz,	White,
Grace,	Moreland,	Mr. President—47.
Hall,	Ohleyer,	

NOES.

Andrews,	Davis,	Howard, of Los Angeles,
Ayers,	Dudley, of Solano,	Huestis,
Barton,	Edgerton,	Hughey,
Belcher,	Estee,	Inman,
Biggs,	Estey,	Johnson,
Blackmer,	Filcher,	Kelley,
Brown,	Freud,	Lampson,
Burt,	Garvey,	Larue,
Casserly,	Graves,	Lavigne,
Chapman,	Hale,	Lindow,
Charles,	Harvey,	Mansfield,
Cross,	Hilborn,	Martin, of Alameda,
McCallum,	Pulliam,	Stevenson,
McComas,	Reddy,	Stuart,
McConnell,	Reynolds,	Thompson,
McCoy,	Rhodes,	Townsend,
McFarland,	Ringgold,	Vacquerel,
McNutt,	Schell,	Van Dyke,
Mills,	Schomp,	Van Voorhies,
Moffat,	Shoemaker,	Waters,
Morse,	Shurtleff,	Webster,
Murphy,	Smith, of Santa Clara,	Wickes,
Nason,	Smith, of 4th District,	Wilson, of Tehama,
Nelson,	Soule,	Wilson, of 1st District,
Neunaber,	Stedman,	Winans,
Porter,	Steele,	Wyatt—79.
Prouty,		

MR. MARTIN, of Santa Cruz. Mr. President: I move to strike out section seven. This section will authorize a different kind of text-books in every county in the State, and create great confusion, and involve a great deal more expense to parents than the present system.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: This section could not have been well understood before. It says that the local Boards of the several counties shall do so and so. I call attention to the fact that there is no such thing as a local Board of Education. This says local Boards of Education of the several counties. There is only one county in the State which has a Board of Education, and that is San Francisco. (To a member interrupting: If you will allow me I will make this argument myself, and then you can have the floor.) Then it goes on to provide that in counties having no Board of Education, the Board of Supervisors shall have control of the matter of prescribing what books shall be used, and conduct the examination of teachers. My experience has led me to believe that the class of men who are selected with reference to their competency to deal with county roads and such subjects, are not the best men to deal with the schools. They are not familiar with the examinations of teachers. These Supervisors are men who perhaps never paid any attention to text-books, and know nothing about them. The books they studied are out of date now, and they have neither the time nor the disposition to examine the modern text-books to ascertain which are the best books. I am satisfied that such a system, if adopted in this State, would be very injurious to the public schools of the State. When it comes to selecting text-books they are just as likely to be corrupted as the Legislature.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: This section, as well as the section which preceded it, was very thoroughly discussed and investigated by the Committee of the Whole, and the report of the Committee on Education, which prescribed that the State Board of Education should recommend a series of text-books, was rejected. The subject-matter involved was made the topic of the most rigid scrutiny, and this system received the sanction of a large majority of the Committee of the Whole. If you strike it out you leave the article without any provision for text-books at all, and without any provision for granting teachers' certificates. It will leave us entirely at sea. The proposition is not that the Board of Supervisors shall prescribe text-books, but the Board of Supervisors in connection with the County Superintendent. The County Superintendent is chosen with reference to his fitness to judge of such matters, and in order to avoid a one-man power, the Supervisors are to act with him. This is only carrying out the doctrine of local self-government which has been sanctioned by this body.

MR. WEST. Mr. President: I hope the motion will not prevail. Where there is no Board of Education the County Superintendent and the Board of Supervisors will form a Board for the purpose. I would suggest to the Chairman of the committee that the word "and," in the first line, should be stricken out and the word "or" substituted.

THE PRESIDENT. The question is on the motion to strike out the section.

The ayes and noes were demanded by Messrs. Martin of Santa Cruz, Evey, Brown, West, and Winans.

MR. McFARLAND. Mr. President: When we struck out the State Board of Education we left the whole system without a head, and I do not suppose it is necessary to remedy it now. The section provides that the text-books shall be chosen by the different counties, which will only add to the confusion. I am in favor of striking out the section, and leaving it to the Legislature to formulate a system which this Convention has failed to do.

THE PRESIDENT. The Secretary will call the roll.

The roll was called, and the Convention refused to strike out by the following vote:

AYES.

Barry,	Lavigne,	Reddy,
Chapman,	Martin, of Santa Cruz,	Ringgold,
Cross,	McCoy,	Schell,
Davis,	McFarland,	Shurtleff,
Dowling,	Mills,	Smith, of 4th District,
Dudley, of Solano,	Murphy,	Steele,
Estee,	Nason,	Stevenson,
Garvey,	Nelson,	Tuttle,
Graves,	Neunaber,	Vacquerel,
Hall,	O'Donnell,	Walker, of Tuolumne,
Harvey,	Porter,	White,
Herrington,	Pulliam,	Wickes—37.
Hughey,		

NOES.

Andrews,	Barbour,	Beerstecher,
Ayers,	Barton,	Bell,

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Biggs,	Holmes,	Reynolds,
Blackmer,	Howard, of Los Angeles,	Rhodes,
Boggs,	Howard, of Mariposa,	Schomp,
Boucher,	Huestis,	Shafter,
Brown,	Hunter,	Shoemaker,
Burt,	Inman,	Smith, of Santa Clara,
Caples,	Johnson,	Smith, of San Francisco,
Casserly,	Jones,	Soule,
Charles,	Joyce,	Stedman,
Condon,	Kelley,	Stuart,
Crouch,	Kenny,	Sweasey,
Dean,	Keyes,	Swenson,
Doyle,	Kleine,	Thompson,
Dunlap,	Lampson,	Tinnin,
Eagon,	Larkin,	Townsend,
Edgerton,	Larue,	Tully,
Estey,	Lindow,	Turner,
Evey,	Mansfield,	Van Dyke,
Farrell,	Martin, of Alameda,	Van Voorhies,
Filcher,	McCallum,	Waters,
Freud,	McComas,	Webster,
Gorman,	McConnell,	Weller,
Grace,	McNutt,	Wellin,
Hale,	Moffat,	West,
Harrison,	Moreland,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wilson, of 1st District,
Herold,	O'Sullivan,	Winans,
Hilborn,	Prouty,	Wyatt,
Hitchcock,	Reed,	Mr. President—93.

MR. McCONNELL. Mr. President: I offer an amendment.

THE SECRETARY read:

"Add at end of section seven, 'subject to general legislative control.'"

MR. McCONNELL. Mr. President: This was offered before when we had a very thin house, and I think it was not understood. This will leave it in the power of the Legislature to regulate it, and there will be some uniformity.

MR. WINANS. Mr. President: I am willing, on behalf of the Committee on Education, to accept that amendment, if there is no objection.

MR. WYATT. Mr. President: I think this amendment is an evidence that the Convention is getting the softening of the brain. The whole idea has been heretofore to take this corrupting book question out of the hands of the Legislature, and now it is proposed to restore it, and bring back to the Legislature all the evils attending the corrupt lobby on the text-book question.

MR. LARKIN. The proposition is a remarkable one, and conflicts with every provision of the section. It places this matter right back where we have sought to take it from. We have proposed to leave this matter with the local authorities, and now, at the very last moment, the gentleman proposes to qualify it, and hand it back to the Legislature. I am opposed to it.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I am in favor of the amendment proposed by the gentleman from Sacramento. I believe the Legislature should not be divested of all control over this matter. I believe if we are to have an educational system which will amount to anything, it should be uniform throughout the State, and the Legislature must have some control in order to give it uniformity. We are attempting to divide the institution up into fifty-two different parts, allowing each part to select its own books, and adopt its own system for the examination of teachers. I say such a system is contrary to the judgment of the best educators in the country. I am one of those who believe that experienced teachers have a better knowledge of these matters than those who are not engaged in the profession, and I presume there is no teacher who understands his business who will maintain that a Board of Supervisors should either select books or examine and pass upon the qualifications of teachers. Just imagine the Board of Supervisors of one of your interior counties selecting spelling books for your children.

MR. TINNIN. Every county in this State has a superintendent, and he is the Board de facto.

MR. ESTEE. I will illustrate it. Now, there will be all the way from three to twelve members of the Boards of Supervisors, and one superintendent to each Board. The result will be, unless they are much wiser Boards than they are and have been, they will take this matter into their own hands and attempt to manage the educational interests of the county, to the detriment of those interests. They will destroy the grand system that is created by the State. I maintain, that because there is some few things in the conduct of some men who have had charge of the educational department of this State has been wrong, that is no reason why we should destroy the entire system. It ought to be uniform all over the State. Everywhere, all over the country, the educational system is considered a State institution. It is under State control. The State furnishes the money for its support, and the State ought to have control. We want it to be a State system. We want uniform rules, uniform laws, and uniform and permanent regulations for the examination of teachers. The educational interests of this State are the most important interests in the State. We ought to treat it with all the dignity that belongs to it.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. President: I hope this amendment will be adopted. I was in favor of it before. I do not wish to go over the ground again, but it is certain that if this section is left as it is, the standard of our teachers will be greatly lowered, and instead of elevating the standard of education in the State, it will be constantly lowered. If we are to be successful, the standard must be upward. If the system does not keep rising it will keep degenerating—it never can stand still. Unless there is some great central control in the examination of teachers, that will certainly be the result. This section, with this amendment, will not throw the text-book question back into the Legislature, as gentlemen claim. It says in so many words, that these local boards shall select a series of text-books. Then that they shall also have control of the examination of teachers, and grant teachers' certificates. If the amendment is adopted, it will apply to the last part of the section, that to the control of the examination of teachers. "Subject to general legislative enactments." Now, that is just what ought to be in there, and if you do not put it in, before many years roll around you will be sorry for it. I feel in earnest upon this question, because having determined not to have a State Board, there is no central authority which has the power to keep this standard up. If this amendment is not adopted, the standard of our teachers will be lowered, and the efficiency of this great educational system impaired.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: This Convention started in at an early day to adopt what is called local self-government. This section is in harmony with that idea. One of the great evils of this State has been the lobby influence around the Legislature on the question of school books, and we have attempted to cure that evil by taking this power out of the hands of the Legislature. Now, the gentleman proposes, by this amendment, to overturn it all, and place the whole matter right back in the hands of the Legislature. I am opposed to it.

REMARKS OF MR. BIGGS.

MR. BIGGS. Mr. President: I desire to offer one or two remarks in answer to the gentleman from San Francisco. I have been taught to believe that consistency was a jewel. When we wanted to leave the Railroad Commissioners to the Legislature he said it would not do. Now, he turns a political somersault and proposes to leave this whole matter to the Legislature.

MR. ESTEE. I never said any such thing.

MR. BIGGS. You did; you proposed to take the control of railroads away from the Legislature.

MR. ESTEE. For the reason, as I then said, that the Legislature had not the time to give it the necessary consideration.

MR. BIGGS. This is for the purpose of doing away with the lobby. I am willing to acknowledge what he says about the Supervisors so far as his own county is concerned. We can except that county. I hope this amendment will not be adopted. In the language of a great statesman: "Stand by your guns, and keep your powder dry." [Laughter.]

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Hunter, Dudley of Solano, Ohleyer, and Moreland.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Hilborn,	Reddy,
Barry,	Howard, of Mariposa,	Reed,
Belcher,	Johnson,	Rhodes,
Blackmer,	Martin, of Alameda,	Schell,
Chapman,	Martin, of Santa Cruz,	Shurtleff,
Charles,	McCallum,	Smith, of Santa Clara,
Cross,	McConnell,	Smith, of 4th District,
Dudley, of Solano,	McCoy,	Stedman,
Eagon,	McFarland,	Steele,
Edgerton,	McNutt,	Stevenson,
Estee,	Mills,	Stuart,
Estey,	Murphy,	Townsend,
Garvey,	Nason,	Vacquerel,
Graves,	Nelson,	Van Dyke,
Hale,	Porter,	Van Voorhies,
Hall,	Prouty,	Wickes,
Harvey,	Pulliam,	Mr. President—49.

NOES.

Andrews,	Freud,	Larue,
Barbour,	Gorman,	Lavigne,
Barton,	Grace,	Lindow,
Beerstecher,	Harrison,	Mansfield,
Bell,	Heiskell,	McComas,
Biggs,	Herold,	Moffat,
Boggs,	Herrington,	Moreland,
Boucher,	Hitchcock,	Morse,
Brown,	Holmes,	Neunaber,
Burt,	Howard, of Los Angeles,	O'Donnell,
Caples,	Huestis,	Ohleyer,
Casserly,	Hughey,	O'Sullivan,
Condon,	Hunter,	Reynolds,
Crouch,	Inman,	Ringgold,
Davis,	Jones,	Schomp,
Dean,	Joyce,	Shafter,
Dowling,	Kelley,	Shoemaker,
Doyle,	Kenny,	Smith, of San Francisco,
Dunlap,	Keyes,	Soule,
Evey,	Kleine,	Sweasey,
Farrell,	Lampson,	Swenson,
Filcher,	Larkin,	Swing,

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Thompson,	Waters,	White,
Tinnin,	Webster,	Wilson, of Tehama,
Tully,	Weller,	Wilson, of 1st District,
Turner,	Wellin,	Winans,
Tuttle,	West,	Wyatt—82.
Walker, of Tuolumne,		

THE PREVIOUS QUESTION.

MR. VACQUEREL. Mr. President: I move the previous question on the whole article.

Seconded by Messrs. Larkin, Huestis, McComas, and Herrington.

THE PRESIDENT. The question is: Shall the main question be now put?

Division was called for, and the Convention refused to order the main question, by a vote of 47 ayes to 64 noes.

MR. WEBSTER. I offer a substitute to section nine.

THE SECRETARY read:

"SEC. 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight, and the several Acts amendatory thereof, subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents and in the administration of its affairs; provided, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two, and the several Acts amendatory thereof, shall be invested as provided by said Act of Congress; and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one college of agriculture, where the leading objects shall be—without excluding other scientific and classical studies, and including military tactics—to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Act of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the fund so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished."

MR. WEBSTER. Mr. President: All I have to say is that this was offered last week, but owing to the previous question it was not fully understood and was voted down. It is at the earnest request of the friends of the University that I offer it now. The amendment ought to be adopted.

REMARKS OF MR. WINANS.

MR. WINANS. Mr. President: When this question was up before, it was disposed of under the previous question, without a word having been uttered by any member of the Board of Regents, or by the Chairman of the committee; we had no hearing on the matter. The same thing occurred when it came up in Convention, when the interests of the University were sacrificed by the previous question. Now, sir, the proposition that was adopted by the Convention was the very worst of all those which have been presented to this body, not only throwing the University into the hands of the Legislature, but making it the plaything of politics. Now, in all these great institutions it is a cardinal principle that they must be stable. They must be beyond all power of assault and subversion, or they will be a failure. There are men in this State who are anxious to make donations to this institution the moment it is placed upon a permanent basis. But so long as it is made subject to legislative caprice; so long as it can be made subject to the beck of politicians; so long as it can be made to subserve sectarian or political designs, it never will flourish. I have letters from the President of the University of Michigan, who complains of this same evil. It was urged that if it is made permanent, then the Legislature would have no control. Not so. This present system was adopted ten years ago, and has not only had a magical effect, but has developed the noblest college existing on the continent. This amendment now pending meets the wishes of the Regents, and of that class of agriculturists who take an interest in this institution. I hope gentlemen will stand by to repel all unfriendly assaults upon the University of California.

MR. AYERS. Mr. President: I offer an amendment to the amendment.

THE SECRETARY read:

"Add: 'No person shall be debarred admission to any of the collegiate departments of the University on account of sex.'"

MR. WINANS. Both classes are taught there now.

MR. AYERS. I want to see both sexes walking side by side in the University, as they can in any of the other schools of the State. The gentleman intimates that there is no necessity for it. I think recent history points to the fact that there is a necessity for it. I hope it will be adopted.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. President: It seems to me that this section ought to be amended in several particulars. I call attention to the phraseology. It is a new kind of nomenclature which calls languages "matters." "Instruction shall be given, in addition to other matters, in agriculture, metallurgy, the mechanic arts, and applied sciences." The languages, mathematics, etc., are denominated "matters." Now, I suppose hereafter, when a student is interrogated as to what he has studied there, he will reply, "matters." [Laughter.] Why, it is an insult to the people of this State; an insult to the great institution of which we are justly proud. As far as my knowledge extends it has been well conducted. I am satisfied of its efficiency. And whenever I see the iconoclastic hand attempted to be laid upon such an institution as the University of California, giving powers to the Legislature that will cripple her, I shall oppose it. Let the phraseology of this section be as broad as the Act of Congress. Now, sir, there are some things that ought to be safe from attack. This institution, which has been so kindly fostered by private grants and donations, which has received the fostering care of the State and of the United States, ought to be let alone. I believe the amendment of the gentleman from Alameda, Mr. Webster, is correct. As to the other amendment offered by Mr. Ayers, I have no objection to that.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: The words "public trust." were discussed before at great length, and they were regarded as highly objectionable. Now, I have said that I am hardly ever astonished at anything, but I certainly had not anticipated that this would come up again, after all that was said here in opposition to it. We said that it should be a perpetual institution, but we carefully avoided the words "public trust." Now, sir, what has been given and donated to that institution cannot be taken away by the Legislature. I am under the impression that we may safely lodge with the Legislature power even to remove the Regents, if it shall become necessary. Why should not the Regents be amenable to Legislative authority when they do anything amiss? I cannot see anything wrong in it. Now, if there is anything in this section that is contrary to the Act of Congress, I have not seen it. I have heard it asserted, but I cannot see it; neither is there anything antagonistic, except it be antagonistic to say that the Regents shall not be superior to the law.

THE PREVIOUS QUESTION.

MR. WALKER, of Tuolumne. Mr. President: I move the previous question.

Seconded by Messrs. West, Stuart, Beerstecher, and Estee.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The first question is on the amendment of the gentleman from Los Angeles, Mr. Ayers.

The ayes and noes were demanded by Messrs. Walker of Tuolumne, O'Sullivan, Grace, West, and Herrington.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Herold,	Ringgold,
Barbour,	Herrington,	Schell,
Barry,	Hilborn,	Shafter,
Barton,	Howard, of Los Angeles,	Shoemaker,
Beerstecher,	Howard, of Mariposa,	Shurtleff,
Belcher,	Huestis,	Smith, of Santa Clara,
Bell,	Hughey,	Smith, of 4th District,
Biggs,	Inman,	Smith, of San Francisco,
Blackmer,	Johnson,	Soule,
Boggs,	Jones,	Stedman,
Boucher,	Joyce,	Steele,
Brown,	Kenny,	Stevenson,
Burt,	Keyes,	Stuart,
Chapman,	Lampson,	Sweasey,
Charles,	Larue,	Swenson,
Cross,	Lavigne,	Thompson,
Dean,	Lindow,	Townsend,
Dudley, of Solano,	Martin, of Alameda,	Tully,
Dunlap,	Martin, of Santa Cruz,	Turner,
Edgerton,	McCallum,	Tuttle,
Estee,	McComas,	Vacquerel,
Estey,	McConnell,	Van Dyke,
Farrell,	McCoy,	Van Voorhies,
Filcher,	McFarland,	Walker, of Tuolumne,
Freeman,	Mills,	Webster,
Freud,	Moffat,	Weller,
Garvey,	Morse,	Wellin,
Gorman,	Nason,	West,
Grace,	Neunaber,	White,
Graves,	Ohleyer,	Wilson, of Tehama,
Hale,	O'Sullivan,	Wilson, of 1st District,
Hall,	Porter,	Winans,
Harrison,	Reed,	Wyatt,
Harvey,	Reynolds,	Mr. President—103.
Heiskell,	Rhodes,	

NOES.

Andrews,	Hitchcock,	O'Donnell,
Caples,	Holmes,	Pulliam,
Casserly,	Hunter,	Reddy,
Condon,	Kleine,	Swing,
Davis,	Mansfield,	Tinnin,
Doyle,	Moreland,	Waters—20.
Evey,	Nelson,	

THE PRESIDENT. The question is upon the adoption of the amendment of the gentleman from Alameda, Mr. Webster, as amended.

The ayes and noes were demanded by Messrs. Freud, Larue, Condon, Johnson, and Blackmer.

The roll was called, and the amendment adopted by the following vote:

AYES.

Ayers,	Biggs,	Casserly,
Beerstecher,	Blackmer,	Chapman,
Belcher,	Burt,	Charles,

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Dudley, of Solano, Lavigne, Shoemaker,
Dunlap, Mansfield, Shurtleff,
Eagon, Martin, of Alameda, Steele,
Edgerton, Martin, of Santa Cruz, Stevenson,
Estee, McCallum, Stuart,
Estey, McConnell, Thompson,
Freeman, McFarland, Townsend,
Freud, McNutt, Tully,
Garvey, Mills, Tuttle,
Graves, Moreland, Vacquerel,
Hall, Morse, Van Dyke,
Harvey, Nason, Van Voorhies,
Herold, Neunaber, Walker, of Tuolumne,
Hilborn, O'Donnell, Webster,
Howard, of Los Angeles, O'Sullivan, Weller,
Huestis, Porter, Wellin,
Inman, Reed, West,
Johnson, Rhodes, Wilson, of 1st District,
Keyes, Schell, Winans,
Lampson, Shafter, Mr. President—70.
Larue,

NOES.

Andrews, Harrison, Pulliam,
Barbour, Heiskell, Reddy,
Barry, Herrington, Reynolds,
Barton, Hitchcock, Ringgold,
Boggs, Holmes, Schomp,
Boucher, Howard, of Mariposa, Smith, of Santa Clara,
Brown, Hughey, Smith, of 4th District,
Caples, Hunter, Smith, of San Francisco,
Condon, Jones, Soule,
Cross, Joyce, Stedman,
Davis, Kelley, Sweasey,
Dean, Kenny, Swenson,
Dowling, Kleine, Tinnin,
Doyle, Larkin, Turner,
Evey, Lindow, Waters,
Farrell, McComas, White,
Filcher, Moffat, Wickes,
Gorman, Nelson, Wilson, of Tehama,
Grace, Ohleyer, Wyatt—59.
Hale, Prouty,

THE PREVIOUS QUESTION.

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

Seconded by Messrs. Estee, Tully, West, and Barton.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Ayers, Howard, of Los Angeles, Schell,
Barbour, Howard, of Mariposa, Shoemaker,
Beerstecher, Huestis, Shurtleff,
Belcher, Hunter, Smith, of Santa Clara,
Bell, Inman, Smith, of 4th District,
Biggs, Johnson, Smith, of San Francisco,
Blackmer, Jones, Soule,
Boggs, Joyce, Steele,
Brown, Kenny, Stevenson,
Burt, Keyes, Stuart,
Casserly, Larkin, Sweasey,
Chapman, Larue, Swing,
Charles, Lavigne, Thompson,
Condon, Lindow, Tully,
Cross, Mansfield, Tuttle,
Dowling, Martin, of Alameda, Vacquerel,
Doyle, Martin, of Santa Cruz, Van Dyke,
Dunlap, McCallum, Van Voorhies,
Edgerton, McConnell, Walker, of Tuolumne,
Estee, McNutt, Waters,
Farrell, Moffat, Webster,
Freeman, Morse, Weller,
Freud, Murphy, Wellin,
Garvey, Nason, West,
Gorman, Neunaber, White,
Graves, O'Donnell, Wilson, of Tehama,
Harrison, Ohleyer, Winans,
Harvey, Rhodes, Mr. President—86.
Herold, Ringgold,

NOES.

Andrews, Evey, Lampson,
Barry, Filcher, McComas,
Barton, Grace, McCoy,
Boucher, Hale, McFarland,
Caples, Heiskell, Mills,
Crouch, Herrington, Moreland,
Davis, Hilborn, Nelson,
Dean, Hitchcock, O'Sullivan,
Dudley, of Solano, Holmes, Porter,
Eagon, Hughey, Prouty,
Estey, Kelley, Reddy,
Reed, Stedman, Turner,
Reynolds, Swenson, Wickes,
Schomp, Tinnin, Wilson, of 1st District,
Shafter, Townsend, Wyatt—45.

The article was referred to the Committee on Revision and Adjustment.

NOTICES.

MR. BARBOUR. Mr. President: I hereby give notice that I will, on to-morrow, move to reconsider the vote by which the Convention this day adopted the article on taxation.

RECONSIDERATION AND QUESTIONS OF PRIVILEGE.

MR. REYNOLDS. Mr. President: I offer a motion. I move to reconsider the vote by which the article on judicial department was yesterday adopted.

THE PRESIDENT. No such notice is on file. The motion is not in order.

MR. REYNOLDS. I do not understand that. According to Rule Thirty-seven, a notice necessarily has to be on the record. On yesterday, when the question was upon the adoption of that article, I voted in the negative, and after the announcement of the vote was made, changed my vote from the negative to the affirmative, thereby voting with the majority, at the same time stating that I did so for the purpose of moving a reconsideration.

MR. WILSON, of First District. Was not that announcement made by you before the Chair had announced the result of the vote?

MR. REYNOLDS. That announcement was made at the time I changed my vote.

MR. WILSON. The Chair had not announced the result.

MR. EDGERTON. Mr. President: I rise to a point of order. The Chair ruled that the motion was not in order, and no appeal has been taken.

THE PRESIDENT. That is the decision of the Chair.

MR. REYNOLDS. The way I understand Rule Thirty-seven is——

THE PRESIDENT. The gentleman is out of order. No such notice was given and entered upon the minutes.

MR. REYNOLDS. Mr. President: Then I desire to speak to a privileged question.

THE PRESIDENT. The gentleman will state his privileged question.

MR. REYNOLDS. Growing out of this motion I attempted to make. In addition to what I said, I changed my vote——

MR. EDGERTON. The rule requires it to be stated in writing.

MR. REYNOLDS. Will you sit down until I get through with this privileged question, and then talk?

THE PRESIDENT. The gentleman must first state the privileged question, and then the Chair will determine whether it is a privileged question or not.

MR. REYNOLDS. In addition to what I have stated concerning——

THE PRESIDENT. The gentleman is out of order.

MR. REYNOLDS. Will the Chair state why?

THE PRESIDENT. The Chair has already stated, that if the gentleman desires to rise to a question of privilege, he must state the question, and then the Chair must decide whether it is a question of privilege or not.

MR. REYNOLDS. My question of privilege is, that having voted in the negative, I changed for the purpose of moving a reconsideration; and I twice attempted to get the ear of the Chair to send up a written notice. Afterwards, in the afternoon, during the consideration of the article on taxation, I obtained recognition by the Chair, and did send up a notice in writing.

THE PRESIDENT. The Chair decides that it is not a question of privilege. Therefore the gentleman is out of order.

MR. REYNOLDS. Will the Chair wait until I have stated the question?

THE PRESIDENT. You have stated it already, and the Chair has decided it.

MR. REYNOLDS. It is a privilege——

THE PRESIDENT. The gentleman will take his seat.

MR. REYNOLDS. I desire——

THE PRESIDENT. Sergeant-at-Arms, will you arrest the gentleman?

[The Sergeant-at-Arms approaches the gentleman.]

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

THE PRESIDENT. Appeal from what decision of the Chair?

MR. REYNOLDS. From the decision that the question is not a question of privilege.

THE PRESIDENT. Under Rule Thirty-nine, no appeal will lie to such decision. That is the opinion of the Chair.

[Order for arrest vacated.]

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

THE PRESIDENT. The next business in order is the consideration of the article on State institutions and public buildings, on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

SECTION 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a

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vacancy occurring before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the Prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty; all other officers and employés of the Prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

SEC. 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

THE PREVIOUS QUESTION.

MR. CONDON. Mr. President: I move the previous question upon the entire article.

Seconded by Messrs. Barton, Doyle, Grace, and Gorman.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Ayers,	Herold,	Rhodes,
Barbour,	Herrington,	Ringgold,
Barry,	Holmes,	Schell,
Barton,	Howard, of Los Angeles,	Shafter,
Beerstecher,	Howard, of Mariposa,	Shurtleff,
Bell,	Huestis,	Smith, of 4th District,
Biggs,	Hughey,	Smith, of San Francisco,
Blackmer,	Hunter,	Soule,
Boggs,	Joyce,	Stedman,
Boucher,	Kenny,	Steele,
Brown,	Kleine,	Stevenson,
Burt,	Lampson,	Sweasey,
Condon,	Larkin,	Swenson,
Cross,	Larue,	Swing,
Davis,	Lavigne,	Thompson,
Dean,	Lindow,	Tully,
Dowling,	Martin, of Alameda,	Tuttle,
Doyle,	McCallum,	Vacquerel,
Edgerton,	McComas,	Van Dyke,
Estee,	McConnell,	Van Voorhies,
Evey,	McCoy,	Walker, of Tuolumne,
Farrell,	Moffat,	Waters,
Filcher,	Moreland,	Webster,
Freeman,	Morse,	Weller,
Freud,	Murphy,	Wellin,
Gorman,	Nason,	West,
Grace,	Nelson,	White,
Graves,	Neunaber,	Wickes,
Hale,	O'Donnell,	Wilson, of Tehama,
Harrison,	O'Sullivan,	Wyatt,
Heiskell,	Reddy,	Mr. President—93.

NOES.

Andrews,	Harvey,	Porter,
Belcher,	Hilborn,	Prouty,
Caples,	Hitchcock,	Pulliam,
Casserly,	Inman,	Reed,
Chapman,	Jones,	Schomp,
Charles,	Kelley,	Shoemaker,
Crouch,	Keyes,	Stuart,
Dudley, of Solano,	Mansfield,	Tinnin,
Dunlap,	McFarland,	Turner,
Eagon,	McNutt,	Wilson, of 1st District,
Estey,	Mills,	Winans—35.
Hall,	Ohleyer,	

Referred to the Committee on Revision and Adjustment.

HARBORS, TIDE WATERS, AND NAVIGABLE STREAMS.

THE PRESIDENT. The next business in order is the consideration of the article on harbors, tide waters, and navigable streams, on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —.

HARBOR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable, and that the people shall not be shut out from the same.

SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

MR. TINNIN. Mr. President: I offer an amendment to section two.

THE SECRETARY read:

"Add to section two—'but nothing in this section shall in any manner impair the rights of the owners of any lands covered with water, who have title thereto under the State of California.'"

MR. TINNIN. The State of California has disposed of a large portion of these tide lands to individuals. Under this section these parties would have no right to fill them in.

MR. AYERS. I have no particular objection to the amendment, but it is not necessary. Whatever titles have passed cannot be disturbed.

MR. BARBOUR. Mr. President: I think the amendment is a very dangerous one. It might be construed to deny the right of eminent domain.

MR. WILSON, of First District. Mr. President: It seems to me that the amendment is a very proper one. This section details that no individual owning tide land shall be permitted to disturb or destroy the navigation of the water. If I had my way I would strike this out. I do not believe the State is in a position to deprive parties of the right to fill in their lands which the State has sold them.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. McCallum, Brown, Beerstecher, Herrington, and Walker of Tuolumne.

The roll was called, and the amendment rejected by the following vote:

AYES.

Belcher,	Huestis,	Schomp,
Biggs,	Inman,	Shafter,
Blackmer,	Johnson,	Shoemaker,
Boggs,	Jones,	Shurtleff,
Boucher,	Kelley,	Stevenson,
Brown,	Martin, of Santa Cruz,	Stuart,
Caples,	McConnell,	Swing,
Casserly,	McCoy,	Thompson,
Charles,	McFarland,	Tinnin,
Crouch,	McNutt,	Townsend,
Davis,	Mills,	Van Voorhies,
Estee,	Moreland,	Walker, of Tuolumne,
Graves,	Murphy,	Waters,
Hall,	Porter,	Wickes,
Harvey,	Prouty,	Wilson, of Tehama,
Hilborn,	Pulliam,	Wilson, of 1st District,
Hitchcock,	Rhodes,	Mr. President—52.
Holmes,		

NOES.

Andrews,	Heiskell,	Ohleyer,
Ayers,	Herold,	O'Sullivan,
Barbour,	Herrington,	Reddy,
Barry,	Howard, of Los Angeles,	Reynolds,
Barton,	Howard, of Mariposa,	Ringgold,
Beerstecher,	Hughey,	Smith, of 4th District,
Bell,	Hunter,	Smith, of San Francisco,
Burt,	Joyce,	Soule,
Condon,	Kenny,	Stedman,
Cross,	Keyes,	Steele,
Dean,	Kleine,	Sweasey,
Dowling,	Lampson,	Swenson,
Doyle,	Larkin,	Tully,
Dudley, of Solano,	Larue,	Turner,
Dunlap,	Lavigne,	Tuttle,
Estey,	Lindow,	Vacquerel,
Evey,	Mansfield,	Van Dyke,
Farrell,	McCallum,	Webster,
Filcher,	McComas,	Weller,
Freud,	Moffat,	Wellin,
Garvey,	Morse,	West,
Gorman,	Nason,	White,
Grace,	Nelson,	Wyatt—71.
Harrison,	Neunaber,	

MR. AYERS. Mr. President: I offer an amendment to section three.

THE SECRETARY read:

"Add to section three: 'but sites for wharves, warehouses, or other necessary incidents to commerce, excepting on the waters of the Bay of San Francisco, may, upon application to the Board of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years, or less, under such regulations as may be prescribed by law.'"

REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: These words were stricken out of that section before, and they ought to be restored, for without this provision this section loses nearly all its force. I was willing to give to the delegates from San Francisco their own choice as to the system of governing the waters of the Bay, and I consulted with them about it. Judge Hager suggested amendments which I incorporated, but when it came

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before the Convention it did not suit Judge Hager, and amidst confusion it was stricken out. If this is not adopted it will be impossible for other counties to grant easements for wharves, warehouses, etc. In other counties than San Francisco we wish this matter placed in the hands of the Supervisors, subject, as this amendment says, to legislative control, so that the State will still have control. I cannot see any objection to the amendment.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: These tide lands were granted to the State by the General Government.

MR. AYERS. They belong to the State by virtue of her sovereignty.

MR. ESTEE. Where the State got them does not make any particular difference. The State owns them. The lands are all under water a portion of the time, and a portion of them all the time. The lands are worth nothing unless appropriated. We propose to say here that they shall never be appropriated; that the State itself shall put the improvements on. The thing never would be done; never can be done, and the only result of the section would be to prohibit the State from having the benefit of its own property. The State never could sell it under this section. The State could do nothing with it under the sun. The most of the lands to-day that have been sold could not be sold to-day for what the State got for them. No man is going to put up any permanent improvements on a lease of twenty years. It is folly, and I move that the section be stricken out.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. President: We are getting into very deep water here. The more a man studies the questions, as to what the powers of the State are over the navigable tide waters of the State, and what the powers of the General Government are over the same waters, and who has the right to say whether they shall be filled in or remain as they are, the more he becomes convinced that they are intricate questions, involving, as they do, the relations between the State and Federal Government. I have no hope that anything which I can say will move this Convention. They have just voted to confiscate vested rights; they have just voted that the people who hold title from the State to certain lands shall not have the use of those lands, and, therefore, when I undertake to talk upon this subject I have no hope to start in on. I speak simply to enter my protest against this invasion of private right, and this wrong that is being perpetrated. Now, I have not time to enter into any argument upon the relations between the State and the General Government. I hope, therefore, that this whole article will be stricken out. The first section is provided for elsewhere, and the balance of the section is absolutely vicious.

MR. SHAFTER. Mr. President: Why were these tide lands purchased by parties? Because they wanted to control the frontage to navigable waters. I own some tide land. The State sold it to me for that very purpose. They took my money for the land. I paid them on that basis. The State sold it to me by metes and bounds, declaring it mine forever. Now, I have three hundred feet of bulkhead that I built. Now it is proposed that every ship which comes along may run up and land, and take possession of that bulkhead and use it, and I am to have nothing to say. That I have no right to stop them because they are the public. That is moonshine. I would like to see the public try it. I will guarantee free navigation to the man who tries it on, if I happen to be there. [Laughter.] The State has made a contract with me. I have fulfilled my part of the contract, and am holding the land under the contract, and I am going to hold it let come what will. If the gentleman desires to prevent any further sales of tide lands, that is all right; that is a mere question of public policy. I do not care to go over the argument again.

ADJOURNMENT.

MR. STUART. I move we adjourn.

Carried.

And, at five o'clock and fifteen minutes P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND FIFTY-THIRD DAY.

SACRAMENTO, Thursday, February 27th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Fawcett,	Lewis,
Berry,	Finney,	Miller,
Boggs,	Glascock,	Noel,
Campbell,	Gregg,	Overton,
Cowden,	Hale,	Terry,
Dudley, of San Joaquin,	Hilborn,	Walker, of Marin.
Dunlap,	Laine,	

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

RESOLUTION.

MR. BEERSTECHER. Mr. President: I send up a resolution.

THE SECRETARY read:

WHEREAS, Wm. Galt, Porter, has paid to Wm. Lewis out of his private funds the sum of two dollars and fifty cents per week for eighteen weeks of the session of this Convention; and whereas, the services of said Wm. Lewis were needed as Rear Porter, and were unprovided for by this body; therefore,

Resolved, That scrip to the amount of forty-five dollars be issued to said Wm. Galt in payment of his disbursements.

Referred to the Committee on Mileage and Contingent Expenses.

HARBORS, TIDE WATERS, AND NAVIGABLE STREAMS.

THE PRESIDENT. The Convention will resume consideration of the article on harbors, tide waters, and navigable streams. The Secretary will read the amendment to section three, offered by the gentleman from Los Angeles, Mr. Ayers.

THE SECRETARY read:

"Add to section three: "But sites for wharves, warehouses or other necessary incidents to commerce, excepting in the waters of the bay of San Francisco, may, upon application to the Boards of Supervisors in the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years or less, under such regulations as may be prescribed by law.'"

THE PRESIDENT. The first question is on the motion of the gentleman from San Francisco, Mr. Estee, to strike out section three.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I trust that that section will not be stricken out. It seems to me that the debate upon this subject has taken a curious turn. It has been assumed that this article attempted to interfere with private rights. It is not liable to any such imputation. That the right of eminent domain may be exercised to provide for all necessary access to navigable waters is a proposition too well settled to admit of controversy. All the American cases agree in this, that the right of navigation cannot be obstructed, and that any man who takes a grant of tide land takes it subject to that condition, that the right of navigation shall be protected. There is, therefore, no pretense that this article can by any possibility affect private rights. Again, these parties who hold lands in deep water which they have filled in, hold it by virtue of the sovereignty of the State, and they hold it subject to the rights of navigation; and it is well settled in all the cases, English and American, that a structure which interferes with navigation is a public nuisance and may be abated. That was in substance the rule in the celebrated Wheeling case, where a bridge was said to interfere with the navigation of the Ohio River. But, sir, we have passed from that first section; and even if a lot were filled in to deep water, if it interfered with navigation so as to prevent access to navigable waters, under the right of eminent domain it could be condemned, the owner first being paid therefor a proper compensation. Therefore, I think it is not necessary to comment upon that section, because we have passed over it. We are now on the third section, which provides, as proposed to be amended:

"SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations; but sites

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for wharves, warehouses, or other necessary incidents to commerce, excepting in the waters of the Bay of San Francisco, may, upon application to the Boards of Supervisors of the counties in which such sites are situated, and after due public notice of such application, be leased by such Boards for a term of twenty years or less, under such regulations as may be prescribed by law."

Now, sir, that section which is the only one before the Convention relates only to the manner in which the State shall dispose of its public property. That is the whole of it. Whether it is wise to grant this property out as we have been doing, in innumerable instances, so as to interfere with commerce, or whether we ought to lease it for terms of years so as to accommodate commerce and secure the interests of the public. Now, it must be apparent that these franchises if leased merely for a term of years, and the fees reserved to the State, that it can ultimately be a source of large revenue to the State, whereas if you grant them in the fee the State realizes nothing, and creates a monopoly of frontage which tends to destroy commerce. We have had an illustration of that in Los Angeles County. The Central Pacific Railroad Company having purchased the only two existing railroad outlets to the coast, they proceeded to buy up all the frontage of the bay of San Pablo, and have actually purchased it all up to a large extent, so that no other person, individual, or company can erect a wharf without their consent; the result of which is to enable one corporation to so fence in the ocean, as to monopolize the commerce of the ocean. I submit to this Convention that this is one of the abuses which it is our duty to correct. Therefore, it is, sir, that I think the third section as proposed is eminently necessary, eminently proper, and eminently judicious so far as the community interests of the State are concerned, and absolutely necessary so far as the protection of the commerce of the country is concerned in the prevention of a monopoly in a few hands. I trust, sir, that the policy which has heretofore existed of selling these lands in fee for a nominal consideration will be changed to one of leasing them for a term of years, which preserves the interests of the State and the rights and interests of commerce.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. Mr. President: The important question before the Convention, as I understand it, is a motion to strike out section three, and the amendment offered by Colonel Ayers of Los Angeles. Section three provides that tide lands within two miles of any incorporated city or town, fronting on waters used for the purposes of navigation, shall be withheld from grant or sale. The gentleman from Los Angeles proposes to modify that so that the State may grant, for a consideration, sites for wharves, warehouses, etc., for the period of twenty years. Now, sir, I assert that there is no necessity for such clause in the first place. The course of the Legislature in regard to this property has always been conservative. The Act of eighteen hundred and fifty-five withheld these lands from sale; and the Act of eighteen hundred and fifty-eight did the same. The first Act of eighteen hundred and sixty-one did the same. The Act of the following day provided for the disposition of these lands under the most guarded and conservative restrictions. The Act of eighteen hundred and sixty-eight provided for the sale of certain tide lands, and withheld from sale others; so that, so far as the course of the Legislature is concerned, it has always been in the line of the provision proposed in this article. Now, sir, I say it would be impolitic to adopt this plan. Take, for instance, Oakland——

MR. AYERS. Does the gentleman notice that the Bay of San Francisco is excepted?

MR. EDGERTON. But there are other bays on this coast. There are a great many other inlets and estuaries, and I am informed several of them are in the same condition. Are these mud-banks to lay there forever? Whereas, if they could be sold and filled in they would be covered with buildings, wharves, and warehouses. The arguments that would apply to Oakland will apply to fifteen or twenty other places. These mud-flats ought to be reclaimed and applied to the uses of commerce and buildings, wharves and warehouses erected where seagoing vessels can load and unload. It seems to me very unwise to put such a restriction as this in the Constitution. As to the other portions of the article, commented upon by General Howard, I do not care to argue it now.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: The amendment proposed by the gentleman from Los Angeles is even worse than I anticipated when I first heard it read. Now, there have been many sales of property, tide lands, in the Bay of San Francisco, and many rights acquired, and a large portion of that water front, or a great deal of the tide lands. If section three is amended as provided by that amendment it would result in this, that it would perpetuate forever all these water-right monopolies that exist there without any possibility of any competition whatever. The State, it is true, controls the water front around the City of San Francisco, but that is limited, as you will see, by looking at the map. This section provides that no more can be granted within two miles. The result would be, if that section should be adopted, that you will place in the organic law an inhibition against either leasing, or selling, or disposing of its rights along the Bay of San Francisco. Whether some provision may not be wisely made in an Act of the Legislature, is another proposition; but the idea of placing such an inhibition as that in the Constitution would be extraordinary, and contrary to the best judgment of this Convention. I am not addressing myself to the first and second sections. I speak only of the third. It will be merely perpetuating the great monopolies we know exist there. It will cut off all chance of competition. We want to have the thing open to commerce, and it is for that reason that I make my motion, and I think it will commend itself to the judgment of this Convention. The commerce of the Pacific coast comes into the Bay of San Francisco, and to put such an inhibition in the Constitution would be extraordinary, and I hope it will not be done.

MR. WYATT. Does not this except the Bay of San Francisco?

MR. ESTEE. That is the very thing it should not do. It says that in the Bay of San Francisco you cannot even lease a piece of land.

MR. AYERS. They may be leased by the Board of Supervisors in San Francisco.

MR. ESTEE. That would not be the construction put upon it. It provides that on the Bay of San Francisco it cannot be leased, and it cannot be sold, and the State will have no control over it, and it will only perpetuate these monopolies that exist there.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: The motion to strike out is the motion before the House, and I hope it will not prevail. The section under consideration, as I understand it, asserts a principle which is exactly in accordance with all that has been done in this Convention. It is to preserve the seashore of the State of California to free egress and ingress for purposes of commerce, and to protect that seashore from monopolies, of whatever character, sitting down there and levying toll upon the commerce of the world. The civil law system, in my opinion, is an improvement upon the common law system, or English system, which we have adopted in reference to the ownership of tide lands, and the tendency now is to retain within the control of the State this property. I maintain that that property never ought to be alienated from the State. It was a mistake that ever it was done, and it now ought to be put a stop to. The only question, then, is, how shall this property be used? I maintain that this provision, with some qualifications, which I will suggest, is the only proper method of regulation of this seashore; that is to say, by leasing the property for periods not beyond twenty years. I consider the amendment of the gentleman from Los Angeles, in reference to the Bay of San Francisco, to be erroneous. I consider it to be dangerous, from the construction which I can see may be placed upon it. A proper amendment would have been to have made the same rule that is made applicable to the Board of Supervisors apply to the Board of Harbor Commissioners. I hope that the amendment of the gentleman from Los Angeles will be voted down, and that the motion to strike out will also be voted down. The section may be imperfect as it stands now, but it can be corrected so as to obviate the objection I mention.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. President: This question of tide lands has been before the Legislature again and again. As we all know, a great many abuses have grown out of the management and sale of tide lands in this State. With regard to the City of San Francisco, an Act was passed authorizing the tide lands there to be sold at auction. It was a well guarded bill, and under it a great deal of money was realized by the State; but by an amendment to that Act the Commissioners in charge were authorized to compromise adverse claims, and to sell a large quantity, and then the mischief commenced. Under the authority of this amendment, the so-called Ellis grab, and others, were perpetrated. Now, take the City of Oakland, which has been referred to. At an early day a charter was granted to the City of Oakland, giving them a little strip of the water front. Some designing men came up afterwards to get a new charter for the City of Oakland; and they secured additional submerged land in the new charter. Again, when I happened to be in the Legislature, another party came up for a new charter, and they again extended the water front of Oakland so that it run up to Hunter's Point, on the San Francisco side, taking in Yerba Buena Island, part of Alcatraz, and the whole of the water front of San Francisco, giving it to those who held under the City of Oakland by a practice that they had resorted to to obtain from that city the whole of that water front. It was to inure to the benefit of those speculators who had divested the City of Oakland of her patrimony. The bill passed rapidly through the Assembly and came into the Senate; and it was there stated that it was a little local measure. I asked delay, and that night, in examining it, I found out what it was; that it was to give the water front of these two cities to those who had succeeded Oakland in the title that had been donated to her. Now, as I understand this section, it is intended to prevent that sort of thing; to prevent the Legislature from violating the Act of Congress under which California was admitted into the Union. It is intended to comply with the Act of Congress upon which we were admitted into the Union—that these navigable waters should remain open and free. Now, we do not know what the filling up of the harbors, or any portion of them, may result in. Engineers have told us that the filling in of the Bay of San Francisco has endangered the harbor of San Francisco, by forming bars and by deposits. I do not see any objection to the section as it stands. On the contrary, I see a great deal in it that recommends it to the Convention. In regard to the amendment offered by the gentleman from Los Angeles, it excepts San Francisco, and the same deviltry that has been going on in the past may go on in the future.

MR. ESTEE. Can the Legislature control it at all if that is adopted?

MR. HAGER. It does not say that the Legislature shall not authorize wharves to be let for the purposes of commerce. The Legislature has the exclusive control, and there is nothing in this amendment to prevent it.

MR. EDGERTON. Does the gentleman not know that the filling up of these mud flats and the building of wharves and warehouses where ships may go to load and unload facilitates commerce?

MR. HAGER. The stealing of the mud flats in the City of Oakland was never done for the purpose of commerce at all. It was done for the personal gain of those individuals who have it now, who had it then, and will have it in all time, and as much more as they can possibly get to the exclusion of the general public.

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REMARKS OF MR. AYERS.

MR. AYERS. Mr. President: This debate has taken a wide and curious range, one that I did not anticipate. Gentlemen have gone so far as even to say that this article, if engrafted upon the Constitution, will interfere with vested rights. How it can have any retroactive effect the gentlemen have not told us, and I cannot see. The gentleman from Marin said, with reference to his land bordering on the bay, that under this article if he had a wharf or bulkhead on his tide lands that he would be compelled to give it up or give free access to it to whoever should ask it. It is not so. The only way in which access can be had over his lands to navigable water, is in the usual way, and for a public use, and in no other way, and that is the principle which underlies this Act. No titles to these lands can be interfered with at all. That rule is laid down in all of the cases, and I refer especially to the case decided by Judge Anderson, in the thirty-second California Reports. Whatever rights may have been acquired by the purchasers of these lands from the State, must have been subservient to the greater rights of the public. This is a matter which has been decided in this State. I will ask the gentleman whether the public policy which has prevailed in this State with reference to the public lands for the last twenty-five years, has been a good one? Whether it has not resulted, or nearly so, in the monopolizing of every frontage upon navigable water in this State, on the rivers, on the ocean, on the harbors, on the inlets, and on the estuaries. Why, sir, there is hardly a point in this State where wagon, or rail, and ship can meet which is not successfully held and owned by private individuals, and from which the public is excluded. The higher interest of the public has been disregarded, and the lesser interest of individuals and corporations has had full sway. If that has been the case in the past policy of selling in fee these lands to private individuals and corporations, I say, is it not right, is it not wise, for us now to reverse that policy and to withhold these lands from sale? The State will have control of them. Whatever the interests of commerce may require, the State will be unable to give. I cannot see any force in the objections that have been made on this floor to the article, in whole or in part, and I think it would be a wise policy on the part of this Convention to adopt it with the amendment.

Messrs. Smith of Santa Clara, Larue, Shoemaker, Kelley, and Wyatt demanded the previous question, which was ordered by the Convention.

Upon the motion to strike out section three, the ayes and noes were demanded by Messrs. Howard of Los Angeles, Brown, Doyle, Condon, and Larkin.

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

AYES.

Belcher,	Larue,	Shoemaker,
Boucher,	Martin, of Alameda,	Shurtleff,
Chapman,	McConnell,	Stevenson,
Charles,	McFarland,	Stuart,
Crouch,	McNutt,	Thompson,
Eagon,	Nason,	Townsend,
Edgerton,	Porter,	Van Dyke,
Estee,	Pulliam,	Van Voorhies,
Hall,	Reed,	Walker, of Tuolumne,
Harvey,	Rhodes,	Webster,
Hitchcock,	Rolfe,	Wilson, of 1st District,
Inman,	Schomp,	Winans,
Jones,	Shafter,	Mr. President—40.
Keyes,		

NOES.

Andrews,	Harrison,	O'Sullivan,
Ayers,	Heiskell,	Prouty,
Barbour,	Herrington,	Reynolds,
Barry,	Holmes,	Ringgold,
Barton,	Howard, of Los Angeles,	Schell,
Beerstecher,	Howard, of Mariposa,	Smith, of Santa Clara,
Bell,	Hughey,	Smith, of 4th District,
Blackmer,	Hunter,	Smith, of San Francisco,
Brown,	Johnson,	Soule,
Burt,	Joyce,	Stedman,
Caples,	Kelley,	Steele,
Casserly,	Kenny,	Sweasey,
Condon,	Lampson,	Swenson,
Cross,	Larkin,	Swing,
Davis,	Lavigne,	Tinnin,
Dean,	Lindow,	Tully,
Dowling,	Mansfield,	Turner,
Doyle,	Martin, of Santa Cruz,	Tuttle,
Dudley, of Solano,	McCallum,	Vacquerel,
Estey,	McComas,	Waters,
Evey,	Mills,	Weller,
Farrell,	Moffat,	Wellin,
Filcher,	Moreland,	West,
Freud,	Murphy,	White,
Garvey,	Nelson,	Wickes,
Gorman,	Neunaber,	Wilson, of Tehama,
Graves,	O'Donnell,	Wyatt—82.
Hager,		

Upon the adoption of the amendment of Mr. Ayers, the ayes and noes were demanded by Messrs. Howard of Los Angeles, Ayers, West, Evey, and Brown.

The roll was called, and the amendment rejected by the following vote:

AYES.

Andrews,	Barton,	Belcher,
Ayers,	Beerstecher,	Brown,
Casserly,	Holmes,	McComas,
Charles,	Howard, of Los Angeles,	Mills,
Cross,	Howard, of Mariposa,	Moffat,
Crouch,	Huestis,	Morse,
Davis,	Hughey,	O'Sullivan,
Estey,	Hunter,	Stevenson,
Evey,	Kelley,	Tully,
Filcher,	Keyes,	Tuttle,
Garvey,	Lampson,	Weller,
Graves,	Larkin,	West,
Hager,	Larue,	Wickes,
Heiskell,	Mansfield,	Wilson, of Tehama—43.
Herrington,		

NOES.

Barbour,	Lavigne,	Smith, of Santa Clara,
Barry,	Lindow,	Smith, of 4th District,
Bell,	Martin, of Santa Cruz,	Smith, of San Francisco,
Blackmer,	McCallum,	Soule,
Boucher,	McConnell,	Stedman,
Burt,	McFarland,	Stuart,
Caples,	McNutt,	Sweasey,
Chapman,	Moreland,	Swenson,
Condon,	Murphy,	Swing,
Dean,	Nason,	Thompson,
Eagon,	Nelson,	Tinnin,
Edgerton,	Neunaber,	Townsend,
Estee,	O'Donnell,	Turner,
Farrell,	Porter,	Vacquerel,
Freud,	Prouty,	Van Dyke,
Gorman,	Pulliam,	Van Voorhies,
Hall,	Reed,	Walker, of Tuolumne,
Harrison,	Rhodes,	Waters,
Harvey,	Ringgold,	Webster,
Hitchcock,	Rolfe,	Wellin,
Inman,	Schell,	White,
Johnson,	Schomp,	Wilson, of 1st District,
Jones,	Shafter,	Winans,
Joyce,	Shoemaker,	Wyatt,
Kenny,	Shurtleff,	Mr. President—76.
Kleine,		

The article was adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Grace,	McComas,
Ayers,	Graves,	Moffat,
Barbour,	Hager,	Moreland,
Barry,	Harrison,	Nelson,
Barton,	Heiskell,	O'Sullivan,
Beerstecher,	Herrington,	Reynolds,
Bell,	Holmes,	Ringgold,
Brown,	Howard, of Los Angeles,	Smith, of Santa Clara,
Caples,	Howard, of Mariposa,	Smith, of 4th District,
Casserly,	Huestis,	Smith, of San Francisco,
Charles,	Hunter,	Soule,
Condon,	Johnson,	Stedman,
Cross,	Joyce,	Swenson,
Davis,	Kenny,	Tully,
Dean,	Keyes,	Tuttle,
Dowling,	Kleine,	Vacquerel,
Evey,	Lampson,	Wellin,
Farrell,	Larkin,	West,
Filcher,	Lindow,	White,
Freud,	Mansfield,	Wilson, of Tehama,
Garvey,	Martin, of Santa Cruz,	Wyatt—65.
Gorman,	McCallum,	

NOES.

Belcher,	Kelley,	Shoemaker,
Biggs,	Larue,	Shurtleff,
Blackmer,	Martin, of Alameda,	Stevenson,
Boucher,	McConnell,	Sweasey,
Burt,	McFarland,	Swing,
Chapman,	McNutt,	Thompson,
Crouch,	Mills,	Tinnin,
Dudley, of Solano,	Morse,	Townsend,
Eagon,	Murphy,	Turner,
Edgerton,	Nason,	Van Dyke,
Estee,	Ohleyer,	Van Voorhies,
Estey,	Porter,	Walker, of Tuolumne,
Freeman,	Prouty,	Waters,
Hall,	Pulliam,	Webster,
Harvey,	Reed,	Weller,
Hitchcock,	Rhodes,	Wickes,
Hughey,	Rolfe,	Wilson, of 1st District,
Inman,	Schomp,	Winans,
Jones,	Shafter,	Mr. President—57.

The article was referred to the Committee on Revision and Adjustment.

RIGHT OF SUFFRAGE.

THE PRESIDENT. The next business in order is the article on the right of suffrage, which the Secretary will read:

THE SECRETARY read:

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ARTICLE —.

RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; provided, that no native of China shall vote at any election; provided further, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privilege of an elector; provided further, that no person hereafter convicted of the embezzlement or misappropriation of public money, while holding office or employed in the public service, shall ever exercise the privileges of an elector, or hold any office whatever in this State.

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

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

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

SEC. 5. All elections by the people shall be by ballot.

Messrs. Murphy, Grace, Tinnin, Dunlap, and Beerstecher demanded the previous question.

Upon the question, "Shall the main question be now put?" the ayes and noes were demanded by Messrs. Ayers, Grace, Keyes, Blackmer, and Swenson.

The roll was called, and the main question ordered by the following vote:

AYES.

Andrews,	Heiskell,	O'Sullivan,
Barbour,	Herrington,	Porter,
Beerstecher,	Hitchcock,	Prouty,
Bell,	Holmes,	Pulliam,
Biggs,	Howard, of Los Angeles,	Reddy,
Burt,	Howard, of Mariposa,	Reed,
Caples,	Hunter,	Reynolds,
Casserly,	Johnson,	Rhodes,
Chapman,	Joyce,	Schell,
Charles,	Kenny,	Smith, of San Francisco,
Condon,	Kleine,	Stedman,
Cross,	Lampson,	Stevenson,
Davis,	Larkin,	Swenson,
Dean,	Lindow,	Swing,
Doyle,	Mansfield,	Thompson,
Dunlap,	Martin, of Santa Cruz,	Tinnin,
Estey,	McComas,	Townsend,
Evey,	Moreland,	Tully,
Farrell,	Morse,	Waters,
Filcher,	Murphy,	Wellin,
Grace,	Nelson,	White,
Hager,	Neunaber,	Mr. President—67.
Harrison,		

NOES.

Ayers,	Inman,	Shurtleff,
Barry,	Jones,	Smith, of 4th District,
Barton,	Kelley,	Soule,
Belcher,	Keyes,	Steele,
Blackmer,	Larue,	Sweasey,
Brown,	McCallum,	Turner,
Crouch,	McConnell,	Tuttle,
Dudley, of Solano,	McFarland,	Vacquerel,
Eagon,	Mills,	Van Dyke,
Edgerton,	Moffat,	Van Voorhies,
Estee,	Nason,	Walker, of Tuolumne,
Freeman,	O'Donnell,	Webster,
Freud,	Ohleyer,	Weller,
Gorman,	Ringgold,	West,
Graves,	Rolfe,	Wickes,
Hall,	Schomp,	Wilson, of Tehama,
Harvey,	Shafter,	Wilson, of 1st District,
Huestis,	Shoemaker,	Wyatt—55.
Hughey,		

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Burt,	Doyle,
Barbour,	Caples,	Dudley, of Solano,
Barry,	Casserly,	Dunlap,
Barton,	Chapman,	Eagon,
Beerstecher,	Charles,	Edgerton,
Belcher,	Condon,	Estey,
Bell,	Cross,	Evey,
Biggs,	Davis,	Farrell,
Boucher,	Dean,	Filcher,
Brown,	Dowling,	Garvey,
Gorman,	Lavigne,	Rolfe,
Grace,	Lindow,	Shurtleff,
Graves,	Martin, of Santa Cruz,	Smith, of San Francisco,
Hager,	McCallum,	Soule,
Harrison,	McComas,	Stedman,
Harvey,	McConnell,	Stevenson,
Heiskell,	McNutt,	Swenson,
Herold,	Moffat,	Swing,
Herrington,	Moreland,	Thompson,
Hitchcock,	Morse,	Tinnin,
Holmes,	Murphy,	Townsend,
Howard, of Los Angeles,	Nason,	Tully,
Howard, of Mariposa,	Nelson,	Tuttle,
Huestis,	Neunaber,	Van Dyke,
Hunter,	Ohleyer,	Waters,
Inman,	O'Sullivan,	Webster,
Johnson,	Porter,	Wellin,
Joyce,	Prouty,	West,
Kenny,	Reddy,	White,
Kleine,	Reed,	Wilson, of 1st District,
Lampson,	Reynolds,	Wyatt,
Larkin,	Rhodes,	Mr. President—97.
Larue,		

NOES.

Ayers,	McFarland,	Steele,
Blackmer,	Mills,	Sweasey,
Crouch,	O'Donnell,	Turner,
Estee,	Pulliam,	Vacquerel,
Freeman,	Ringgold,	Van Voorhies,
Hall,	Schomp,	Walker, of Tuolumne,
Jones,	Shafter,	Weller,
Kelley,	Shoemaker,	Wickes,
Keyes,	Smith, of 4th District,	Wilson, of Tehama—27.

The article was referred to the Committee on Revision and Adjustment.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

THE PRESIDENT. The Secretary will read the article on City, County, and Township Organization.

THE SECRETARY read:

ARTICLE XI.

CITIES, COUNTIES, AND TOWNS.

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

SEC. 4. The Legislature shall establish a system of county governments, which shall be uniform throughout the State; and, by general laws, shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws.

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their compensation. It shall regulate the salaries and fees of all county officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession.

SEC. 6. The Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns; and cities and towns heretofore organized or incorporated may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith.

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election

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only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for two years. Any casual vacancy in the office of Supervisor, in either Board, shall be filled by the Mayor.

SEC. 8. Any city may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city, at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each House, it shall become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

SEC. 9. The compensation or fees of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 12. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 13. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 14. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, and the public interest demands it, appoint such officers.

SEC. 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall, immediately on receipt thereof, be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SEC. 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 18. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any one year the income and revenue provided for them respectively for such year, without the assent of two thirds of the qualified voters thereof voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

SEC. 19. No public work or improvement of any description whatsoever shall be done or made, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable, or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be affected or benefited, shall be levied, collected, and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.

MR. HAGER. Mr. President: Being Chairman of the committee, I would like the Convention to indulge me to offer an amendment to section five.

THE SECRETARY read:

"In line five strike out 'compensation,' and insert 'terms of office.' In lines five and six strike out 'salaries and fees of county officers,' and insert 'compensation of all such officers.'"

MR. HAGER. Mr. President: The object of the amendment is merely to correct the phraseology.

The amendment was adopted.

MR. HAGER. Mr. President: I offer a substitute for section six, changing a portion of it.

MUNICIPAL CORPORATIONS.

THE SECRETARY read:

"SEC. 6. Corporations for municipal purposes shall not be created by special laws, but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith, and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by such general laws."

MR. HAGER. Mr. President: The intention is to make it appear distinctly that the Legislature shall have no power to create municipal corporations by special laws. My amendment restores the words struck out of the section during my absence, and leaves it so that the Legislature cannot create municipal corporations by special laws, but only by general laws. Then it has been stated that this was intended to take the charters beyond the control of the Legislature. Such never was the intention of this article. On the contrary, the charters are intended to be subordinate to general laws. To make it beyond all controversy I amend section six, so that the Legislature shall provide for the organization of cities and towns, by general laws, which general laws may be altered, amended, or repealed. I hope the substitute will be adopted.

Messrs. Schell, Larkin, Freeman, Mansfield, and Pulliam demanded the previous question, which was ordered by the Convention.

The amendment of Mr. Hager was adopted.

MR. WILSON. Mr. President: I offer an amendment to section seven.

THE SECRETARY read:

"Add to section seven: 'Provided, that notwithstanding anything herein contained the Legislature may grant to any city or consolidated city and county, where the population exceeds one hundred thousand persons, a special charter defining its powers and duties.'"

MR. WILSON, of First District. Mr. President: I happened to be absent when this question came up before. Of course it is quite late now to present anything of such a radical character as the amendment which I have proposed, but I do it for this reason. I do not believe the City of San Francisco will ever be able to get along without a government somewhat of the character and nature of its present government. I therefore think that in this exceptional case charters might be left to the Legislature, and with that view I offer this amendment.

MR. HAGER. Mr. President: I would like to ask my colleague if section eight does not offer all the machinery for obtaining a charter, under general law, and subject to the approval of the Legislature, by calling a Convention, which hitherto was the law applicable to San Francisco by special legislation? The Consolidation Act will remain in force in our city until a new charter is framed under general law, or under section eight by calling a Convention, whenever the people see fit to call a Convention, as our Convention here was called, and they frame a charter; they submit it to the people; the people ratify it or reject it, the same as a Constitution of this State. If it is ratified by the people it becomes the charter. I do not think it would be wise to adopt the amendment, because that brings back the special legislation again.

MR. EDGERTON. Mr. President: It seems to me that my friend, the Chairman of the committee, has succeeded in bringing this matter to the sole control of the Legislature. It is true that section eight provides for a Convention to frame a charter, but that charter is subject to the approval and ratification of the Legislature, and this morning it is so fixed that the Legislature may, by a general law, create a city government anywhere. That general law is its charter, and so the whole thing has been ultimately brought back to the sole control of the Legislature, and this idea of secession in San Francisco has at last become a

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mere myth. Now, it seems to me that the amendment ought to be adopted; that the Legislature ought to have the power to make special provisions for certain localities. I do not now anticipate any, but it certainly might be true that a great many regulations would be proper for such a city as San Francisco that would not apply to other places, and it ought to be left to the Legislature to make specific provisions for them.

MR. BEERSTECHER. Mr. President: As has been said by the gentleman from Sacramento, the circumstances surrounding San Francisco are peculiar. San Francisco needs special legislation, and in order to allow the people of San Francisco to form for themselves an organic law this Convention adopted section eight, which allows the City of San Francisco to call a charter Convention, and to frame a new charter for that city in accordance with the needs and wants of that city. Now, sir, if the amendment of the gentleman from San Francisco, Mr. Wilson, be adopted, the Convention may as well strike out section eight, because if the Legislature have a right to step in and control them why have section eight? The argument of the gentleman from Sacramento proceeds upon the ground that every locality having peculiar interests of its own ought to have a right to have those interests determined. Our whole object in framing this Constitution has been to give local self-government; to establish, if possible, townships; to localize counties, and to allow the people of a particular locality to frame for themselves, as far as consistent, legislation applicable to that locality. If any people know what they desire to have in regard to commercial interests, shipping interests, manufacturing or mercantile interests, and all of the several and varied interests that are centered in San Francisco, it is the people of San Francisco. They are the most competent to judge. Now, if we are going to abandon the whole system we have adopted, then it would be wise to adopt the amendment.

MR. ESTEE. Under this article, if adopted, it will be impossible for the Legislature to legislate relative to San Francisco, will it not?

MR. BEERSTECHER. I do not know whether it will or not. I have my serious doubts.

MR. ESTEE. Admitting that it is true, I want to know if you, under our present Consolidation Act, can run San Francisco if they do not adopt a charter?

MR. BEERSTECHER. We will try to run it.

MR. ESTEE. That shows that you do not understand the matter, because I understand that you have to have appropriations every year by the Legislature, or the whole machinery of that government stops. That is the theory of our Consolidation Act. You have to have appropriations every year by the Legislature.

MR. BEERSTECHER. I have understood from the start that the gentleman from San Francisco favored section eight.

MR. ESTEE. I am in favor of section eight. I am not objecting to section eight except that it seems, upon examining the Consolidation Act, that the whole city government will stop unless there are appropriations made annually, or biennially, providing for the various funds. I am informed that that is the case, and if so, there has got to be some provision put in here.

MR. BEERSTECHER. If this is adopted it will make two conflicting clauses in the Constitution, and I agree with the Chairman of the committee, that it is not needed.

MR. BARBOUR. Mr. President: If the amendment of the gentleman from San Francisco, Mr. Wilson, was adopted, it would be unnecessary to retain section eight in the article. I contend that the proper method to adopt for the government of the City of San Francisco, is for the people to adopt a charter, and the Legislature to ratify it. That is the only correct and sound doctrine. The amendment directly provides for special legislation. The power to create a special charter, would involve the power to amend the special charter. That would bring the whole thing back to the old noxious system of special legislation. Why, sir, under the proposition of the gentleman it would not be possible to widen a street in San Francisco, under this special charter, without going to the Legislature and obtaining a bill amending the special charter. Is not that the inevitable result of his proposition? The amendment will destroy the harmony of the system, and take us back to the noxious system of special legislation, against which this Convention has entered its protest.

Messrs. Dudley of Solano, Rolfe, Keyes, Brown, and Lindow demanded the previous question, which was ordered by the Convention.

Upon the adoption of the amendment, the ayes and noes were demanded by Messrs. Grace, Bell, White, Harrison, and Beerstecher.

The roll was called, and the amendment rejected by the following vote:

AYES.

Boucher,	Larue,	Shafter,
Casserly,	Martin, of Alameda,	Shoemaker,
Crouch,	Martin, of Santa Cruz,	Shurtleff,
Dudley, of Solano,	McFarland,	Stevenson,
Eagon,	McNutt,	Stuart,
Edgerton,	Murphy,	Townsend,
Estee,	Porter,	Turner,
Garvey,	Prouty,	Walker, of Tuolumne,
Graves,	Pulliam,	Weller,
Hall,	Rhodes,	Wilson, of 1st District,
Hitchcock,	Schell,	Winans,
Holmes,	Schomp,	Mr. President—36.

NOES.

Andrews,	Bell,	Caples,
Barbour,	Biggs,	Charles,
Barry,	Blackmer,	Condon,
Barton,	Brown,	Cross,
Beerstecher,	Burt,	Davis,
Dean,	Johnson,	Reynolds,
Dowling,	Jones,	Ringgold,
Doyle,	Joyce,	Smith, of 4th District,
Dunlap,	Kelley,	Smith, of San Francisco,
Estey,	Kenny,	Soule,
Evey,	Keyes,	Stedman,
Farrell,	Larkin,	Sweasey,
Filcher,	Lavigne,	Swenson,
Freeman,	Lindow,	Swing,
Freud,	Mansfield,	Thompson,
Gorman,	McCallum,	Tinnin,
Grace,	McComas,	Tully,
Hager,	McConnell,	Tuttle,
Harrison,	Mills,	Vacquerel,
Heiskell,	Moffat,	Van Dyke,
Herold,	Moreland,	Webster,
Herrington,	Morse,	Wellin,
Howard, of Los Angeles,	Nason,	West,
Howard, of Mariposa,	Nelson,	White,
Hughey,	Neunaber,	Wickes,
Hunter,	Ohleyer,	Wyatt—80.
Inman,	O'Sullivan,	

MR. MORELAND. Mr. President: I send up an amendment.

THE SECRETARY read:

"Amend section eight: Insert after word 'city,' and before 'may,' in first line, the following: 'containing a population of more than one hundred thousand inhabitants.'"

MR. MORELAND. Mr. President: This section was originally framed for the benefit of San Francisco, and has been claimed at all times that it was for the purpose of giving San Francisco a charter under this section. The words were stricken out in Committee of the Whole, and this is only to restore them as they were before. Section six, of this article, also provides for the incorporation of cities and towns. I think that section is ample for all other cities except San Francisco, and therefore this section ought to be made to San Francisco alone.

MR. ESTEE. Mr. President: The result of that will be that you will have a special provision in the Constitution for San Francisco, and you declare that there shall be none but general laws passed for San Francisco.

MR. MORELAND. Might there not be some other city in the State besides San Francisco that will have more than one hundred thousand inhabitants?

MR. ESTEE. It will be a long time.

MR. SCHELL. I would like to ask the gentlemen from San Francisco whether section eight was not passed specially for San Francisco?

MR. ESTEE. I cannot say whether it was or not. I know very well that it was made applicable to every city in the State. I do not say that it ought or ought not to be passed. I only say this, that you now say in the Constitution, that this whole article shall only apply to San Francisco; but you also say that there shall be no special legislation for its benefit; although you admit thereby that its wants and necessities are different from other parts of the State.

MR. SCHELL. Mr. President: I desire to detain the Convention only a moment. I am inclined to think, sir, that the amendment moved by the gentleman from Sonoma, Mr. Moreland, ought to pass. This was intended to relate to San Francisco alone; but as it stands now it will apply to every city, however small it may be, and before any small town may be incorporated, it must comply with the provisions of this Act. After a city or town have adopted a charter, they must come to the Legislature and have it ratified. Now, gentlemen, I desire to ask if that is not special legislation of the worst sort, and the very thing which it seems to me has been the policy of this Convention to avoid? In our legislative article we have enumerated a great many subjects upon which the Legislature shall not be permitted to pass special laws, and I say that if there is anything that this Convention has sat down on, it is this question of special legislation.

MR. ESTEE. By this amendment you admit that the necessities of San Francisco are different from those of the rest of the State. If that be true, why should there not be special legislation for San Francisco?

MR. SCHELL. I have no objection to special legislation for San Francisco; I voted for the proposition of Judge Wilson, of San Francisco, but it was not carried. But what I do object to is, that this will provide special legislation for the small cities and towns. I do not wish to discuss the proposition, but I say that if we desire to cut off this special legislation, we ought to adopt the amendment offered by the gentleman from Sonoma, Mr. Moreland.

MR. REYNOLDS. Mr. President: I am not opposed to the amendment of the gentleman from Sonoma, Mr. Moreland, but before we vote for that amendment we ought to consider well what its provisions are, and not be misled. The proposition contained in section eight only goes to the method of obtaining a charter for an incorporated city. We have provided in section six, that no city can be chartered except by general laws, and that that charter shall be subservient to the general laws of the State. Section eight provides how the people of a city may proceed in framing and adopting their charter. These provisions do not go to the substance of the charter, or of any local legislation under the charter, but it only provides the method—how they shall obtain the charter, and how amend it. The main question to be decided in voting upon this amendment of Mr. Moreland is, whether or not the method adopted in section eight is a good method? If it is a good method for a city of one hundred thousand inhabitants, is it not a good method for a city of less inhabitants? That is the question at issue now. I assume, for the purposes of this argument, that the method is a good one, and that is the only thing contained in this section; it is the method whereby the people shall proceed to adopt, or to construct and adopt a charter. I

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claim that it is a good method. I do not believe that the Legislature could provide a better rule than that contained in section eight, for San Francisco, or any other city. I am inclined to vote against the amendment for these reasons, but I do not wish to vote against it for the purpose of tacking this method on to the smaller cities and towns if they don't want it. I am only throwing out these suggestions.

Messrs. Wyatt, West, Evey, Rolfe, and Biggs demanded the previous question, which was ordered by the Convention.

The amendment of Mr. Moreland was adopted.

Messrs. Prouty, McConnell, Schomp, Eagon, and Murphy demanded the previous question, which was ordered by the Convention.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Grace,	O'Sullivan,
Barbour,	Hager,	Prouty,
Barry,	Harrison,	Reynolds,
Barton,	Heiskell,	Rhodes,
Beerstecher,	Herold,	Ringgold,
Belcher,	Herrington,	Rolfe,
Bell,	Holmes,	Shurtleff,
Biggs,	Howard, of Los Angeles,	Smith, of Santa Clara,
Blackmer,	Huestis,	Smith, of 4th District,
Boucher,	Hunter,	Smith, of San Francisco,
Brown,	Inman,	Stedman,
Burt,	Johnson,	Steele,
Caples,	Joyce,	Stevenson,
Casserly,	Kenny,	Swenson,
Chapman,	Keyes,	Swing,
Charles,	Lampson,	Thompson,
Condon,	Larkin,	Tully,
Davis,	Larue,	Tuttle,
Dowling,	Lavigne,	Vacquerel,
Doyle,	Lindow,	Van Dyke,
Dudley, of Solano,	Mansfield,	Walker, of Tuolumne,
Dunlap,	Martin, of Santa Cruz,	Waters,
Estee,	McCallum,	Webster,
Estey,	McConnell,	Wellin,
Evey,	McNutt,	West,
Farrell,	Mills,	White,
Filcher,	Moffat,	Wickes,
Freeman,	Nelson,	Wyatt,
Freud,	Neunaber,	Mr. President—89.
Gorman,	Ohleyer,	

NOES.

Cross,	Kelly,	Shoemaker,
Crouch,	Martin, of Alameda,	Soule,
Dean,	McComas,	Stuart,
Eagon,	Murphy,	Tinnin,
Edgerton,	Pulliam,	Townsend,
Garvey,	Reed,	Turner,
Graves,	Schell,	Weller,
Hall,	Schomp,	Wilson, of 1st District,
Hitchcock,	Shafter,	Winans—28.
Jones,		

The article was referred to the Committee on Revision and Adjustment.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

BOUNDARY.

THE PRESIDENT. The next business in order is the consideration of the article on boundary, on second reading. The Secretary will read.

THE SECRETARY read the article, as follows:

ARTICLE —.

BOUNDARY.

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

MR. PROUTY. I move the previous question.

No second.

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Herold,	Ringgold,
Barbour,	Herrington,	Rolfe,
Barry,	Hitchcock,	Schell,
Barton,	Holmes,	Schomp,
Beerstecher,	Howard, of Los Angeles,	Shafter,
Belcher,	Huestis,	Shurtleff,
Bell,	Hughey,	Smith, of Santa Clara,
Biggs,	Hunter,	Smith, of 4th District,
Blackmer,	Inman,	Smith, of San Francisco,
Boucher,	Johnson,	Soule,
Brown,	Joyce,	Stedman,
Burt,	Kenny,	Steele,
Caples,	Keyes,	Stevenson,
Casserly,	Lampson,	Stuart,
Charles,	Larkin,	Swenson,
Condon,	Lavigne,	Thompson,
Cross,	Lindow,	Tinnin,
Crouch,	Mansfield,	Townsend,
Davis,	Martin, of Santa Cruz,	Tully,
Dowling,	McCallum,	Tuttle,
Doyle,	McComas,	Vacquerel,
Dudley, of Solano,	McConnell,	Van Dyke,
Dunlap,	McCoy,	Van Voorhies,
Eagon,	McNutt,	Walker, of Tuolumne,
Edgerton,	Moffat,	Waters,
Estee,	Moreland,	Webster,
Estey,	Murphy,	Weller,
Evey,	Nason,	Wellin,
Farrell,	Nelson,	West,
Filcher,	Neunaber,	White,
Freud,	Ohleyer,	Wickes,
Gorman,	O'Sullivan,	Wilson, of Tehama,
Grace,	Porter,	Wilson, of 1st District,
Hager,	Prouty,	Winans,
Hall,	Pulliam,	Wyatt,
Harrison,	Reynolds,	Mr. President—110.
Heiskell,	Rhodes,	

NOES.

Garvey,	McFarland,	Sweasey,
Jones,	O'Donnell,	Turner—8.
Kelley,	Shoemaker,	

The article was referred to the Committee on Revision and Adjustment.

DISTRIBUTION OF POWERS.

THE PRESIDENT. The next business in order is the consideration of the article on distribution of powers, on second reading. The Secretary will read.

THE SECRETARY read the article, as follows:

ARTICLE —.

DISTRIBUTION OF POWERS.

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

MR. SCHELL. I move to strike out the word "is" in line five.

Adopted.

MR. EDGERTON. I would suggest to the friends of the Constitution that the Railroad Commissioners ought to be added there.

MR. MORELAND. And the Chief Justice of the Supreme Court. [Laughter.]

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Estey,	Joyce,
Barbour,	Evey,	Kenny,
Barry,	Farrell,	Keyes,
Beerstecher,	Filcher,	Lampson,
Belcher,	Freud,	Larkin,
Bell,	Garvey,	Lavigne,
Biggs,	Gorman,	Lindow,
Blackmer,	Grace,	Mansfield,
Boucher,	Graves,	Martin, of Alameda,
Brown,	Hager,	Martin, of Santa Cruz,
Burt,	Hall,	McCallum,
Caples,	Harrison,	McComas,
Charles,	Harvey,	McConnell,
Condon,	Heiskell,	McCoy,
Cross,	Herold,	McNutt,
Crouch,	Herrington,	Mills,
Davis,	Hitchcock,	Moffat,
Dean,	Holmes,	Moreland,
Dowling,	Howard, of Los Angeles,	Murphy,
Doyle,	Huestis,	Nason,
Dudley, of Solano,	Hughey,	Nelson,
Dunlap,	Hunter,	Neunaber,
Eagon,	Inman,	O'Donnell,
Edgerton,	Johnson,	Ohleyer,
Estee,	Jones,	O'Sullivan,

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Prouty,	Steele,	Walker, of Tuolumne,
Rhodes,	Stevenson,	Waters,
Ringgold,	Stuart,	Webster,
Rolfe,	Sweasey,	Weller,
Schomp,	Swenson,	Wellin,
Shafter,	Thompson,	West,
Shoemaker,	Tinnin,	White,
Shurtleff,	Townsend,	Wickes,
Smith, of Santa Clara,	Tully,	Wilson, of Tehama,
Smith, of 4th District,	Tuttle,	Wilson, of First District,
Smith, of San Francisco,	Vacquerel,	Winans,
Soule,	Van Dyke,	Wyatt,
Stedman,	Van Voorhies,	Mr. President—114.

NOES.

Casserly,	McFarland,	Pulliam,
Kelley,	Porter,	Turner—6.

The article was referred to the Committee on Revision and Adjustment.

LAND AND HOMESTEAD EXEMPTION.

THE PRESIDENT. The next business in order is the consideration of the article on land and homestead exemption. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —.

LAND AND HOMESTEAD EXEMPTION.

SECTION 1. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.

SEC. 2. The holding of large tracts of land, uncultivated, and unimproved, by individuals and corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

SEC. 3. Hereafter lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

THE PREVIOUS QUESTION.

MR. DUNLAP. I move the previous question.

Seconded by Messrs. Murphy, Gorman, Hunter, and Mansfield.

THE PRESIDENT. The question is: Shall the main question be now put?

The ayes and noes were demanded by Messrs. Vacquerel, Joyce, O'Sullivan, Lindow, and Reynolds.

The roll was called, and the main question ordered by the following vote:

AYES.

Barbour,	Herold,	Pulliam,
Barry,	Holmes,	Rhodes,
Barton,	Howard, of Los Angeles,	Ringgold,
Bell,	Hunter,	Schell,
Biggs,	Inman,	Shafter,
Blackmer,	Johnson,	Shoemaker,
Boucher,	Joyce,	Smith, of Santa Clara,
Caples,	Kenny,	Smith, of San Francisco,
Charles,	Keyes,	Stedman,
Condon,	Larkin,	Steele,
Cross,	Mansfield,	Stevenson,
Crouch,	Martin, of Santa Cruz,	Townsend,
Davis,	McComas,	Turner,
Dean,	McCoy,	Tuttle,
Doyle,	McNutt,	Van Dyke,
Dunlap,	Mills,	Van Voorhies,
Edgerton,	Moffat,	Walker, of Tuolumne,
Estee,	Moreland,	Waters,
Estey,	Murphy,	Webster,
Evey,	Nason,	Weller,
Farrell,	Nelson,	Wellin,
Gorman,	Neunaber,	West,
Graves,	O'Donnell,	Wilson, of Tehama,
Harrison,	Ohleyer,	Wyatt,
Harvey,	Porter,	Mr. President—77.
Heiskell,	Prouty,	

NOES.

Andrews,	Herrington,	Shurtleff,
Beerstecher,	Hitchcock,	Smith, of 4th District,
Belcher,	Huestis,	Soule,
Brown,	Hughey,	Stuart,
Burt,	Jones,	Sweasey,
Casserly,	Kelley,	Swenson,
Dowling,	Lampson,	Thompson,
Dudley, of Solano,	Lavigne,	Tinnin,
Eagon,	Lindow,	Tully,
Filcher,	Martin, of Alameda,	Vacquerel,
Freud,	McCallum,	White,
Garvey,	McConnell,	Wickes,
Grace,	McFarland,	Wilson, of 1st District,
Hager,	O'Sullivan,	Winans—44.
Hall,	Schomp,	

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll:

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Herold,	Rhodes,
Barbour,	Herrington,	Ringgold,
Barry,	Holmes,	Rolfe,
Barton,	Howard, of Los Angeles,	Schell,
Beerstecher,	Huestis,	Shafter,
Belcher,	Hughey,	Shoemaker,
Bell,	Hunter,	Shurtleff,
Biggs,	Inman,	Smith, of Santa Clara,
Blackmer,	Johnson,	Smith, of 4th District,
Boucher,	Joyce,	Smith, of San Francisco,
Brown,	Kenny,	Soule,
Burt,	Keyes,	Stedman,
Caples,	Lampson,	Steele,
Casserly,	Larkin,	Stevenson,
Charles,	Larue,	Swenson,
Condon,	Lavigne,	Thompson,
Cross,	Lindow,	Tinnin,
Crouch,	Mansfield,	Townsend,
Davis,	Martin, of Santa Cruz,	Tully,
Dean,	McCallum,	Turner,
Doyle,	McComas,	Tuttle,
Dudley, of Solano,	McConnell,	Vacquerel,
Dunlap,	McCoy,	Van Dyke,
Estee,	McNutt,	Van Voorhies,
Estey,	Mills,	Walker, of Tuolumne,
Evey,	Moffat,	Waters,
Farrell,	Murphy,	Webster,
Filcher,	Nason,	Weller,
Freud,	Nelson,	Wellin,
Garvey,	O'Donnell,	West,
Gorman,	Ohleyer,	White,
Graves,	O'Sullivan,	Wilson, of Tehama,
Hager,	Porter,	Wilson, of 1st District,
Harrison,	Prouty,	Winans,
Harvey,	Reed,	Wyatt,
Heiskell,	Reynolds,	Mr. President—108.

NOES.

Dowling,	Hitchcock,	Pulliam,
Eagon,	Jones,	Schomp,
Edgerton,	Kelley,	Stuart,
Grace,	Martin, of Alameda,	Sweasey,
Hall,	Moreland,	Wickes—15.

The article was referred to the Committee on Revision and Adjustment.

STATE AND MUNICIPAL INDEBTEDNESS.

THE PRESIDENT. The next business in order is the consideration of the article on State and municipal indebtedness, on second reading. The Secretary will read.

THE SECRETARY read the article, as follows:

ARTICLE —.

STATE AND MUNICIPAL INDEBTEDNESS.

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

MR. CASSERLY. Mr. President: I offer an amendment to the article, to be added thereto.

THE SECRETARY read:

"The Legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same."

Adopted.

MR. HAGER. I don't know whether it is in order or not, but the title ought to be changed to "State indebtedness." It has no application to municipal indebtedness.

MR. WALKER, of Tuolumne. I move to strike out the word "some," in the fifth line. It is an error.

So ordered.

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article, as amended, was adopted as a part of the Constitution by the following vote:

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AYES.

Andrews,	Hitchcock,	Reynolds,
Barbour,	Holmes,	Rhodes,
Barry,	Howard, of Los Angeles,	Ringgold,
Barton,	Howard, of Mariposa,	Rolfe,
Beerstecher,	Huestis,	Schomp,
Belcher,	Hughey,	Shafter,
Bell,	Hunter,	Shoemaker,
Biggs,	Inman,	Shurtleff,
Blackmer,	Johnson,	Smith, of Santa Clara,
Boucher,	Joyce,	Smith, of 4th District,
Brown,	Kenny,	Smith, of San Francisco,
Burt,	Keyes,	Soule,
Caples,	Kleine,	Stedman,
Casserly,	Lampson,	Steele,
Charles,	Larkin,	Stevenson,
Condon,	Larue,	Stuart,
Crouch,	Lavigne,	Sweasey,
Davis,	Lindow,	Swenson,
Dean,	Mansfield,	Thompson,
Doyle,	Martin, of Alameda,	Tinnin,
Dudley, of Solano,	Martin, of Santa Cruz,	Townsend,
Edgerton,	McCallum,	Tully,
Estee,	McComas,	Turner,
Estey,	McConnell,	Tuttle,
Evey,	McCoy,	Vacquerel,
Farrell,	McNutt,	Van Dyke,
Filcher,	Mills,	Van Voorhies,
Freud,	Moffat,	Walker, of Tuolumne,
Garvey,	Moreland,	Waters,
Gorman,	Murphy,	Webster,
Grace,	Nason,	Wellin,
Graves,	Nelson,	West,
Hager,	Neunaber,	Wickes,
Hall,	O'Donnell,	White,
Harrison,	Ohleyer,	Wilson, of Tehama,
Harvey,	O'Sullivan,	Wilson, of 1st District,
Heiskell,	Porter,	Winans,
Herold,	Prouty,	Wyatt,
Herrington,	Reed,	Mr. President—116.

NOES.

McFarland,	Pulliam,	Weller—3.

The article was referred to the Committee on Revision and Adjustment.

SCHEDULE.

THE PRESIDENT. The next business in order is the consideration of the article on schedule, on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

SEC. 2. That all recognizances, obligations, and all other instruments, entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SEC. 3. The Legislature, at its first session after the adoption of this Constitution, shall provide for the transfer of all records, books, papers, and proceedings from such Courts as are abolished by this Constitution to the Courts provided herein; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein. No officer elected at the first election after the adoption of this Constitution shall be entitled to draw any salary until he shall have been duly installed as such either by provisions herein or by Act of the Legislature.

SEC. 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the Post Office address of each registered voter; provided, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SEC. 5. The Superintendent of Printing of the State of California, shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State, five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks, five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the new Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; provided, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SEC. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes, on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from day to day until all the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SEC. 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the day hereinafter specified.

SEC. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms as in this Constitution provided; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction, shall be elected at the time and in the manner that State officers are elected.

SEC. 11. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers heretofore provided for by law, and who are not named or provided for in this Constitution, and also such officers who are named in this Constitution, the commencement of the terms of officers, and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

SEC. 12. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

MR. ESTEE. Mr. President: I move a verbal amendment to section eleven.

THE SECRETARY read:

"Strike out all after the word 'officers,' in third line, up to and including the word 'Constitution,' in fifth line."

Adopted.

MR. BELCHER. Mr. President: I offer an amendment to section three.

THE SECRETARY read:

"Strike out all after the word 'therein,' in the sixth line."

MR. BELCHER. Mr. President: These words either mean nothing, or they mean something that we ought not to say. If an officer is

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elected, when the time comes he is installed in office, and that is all there is of it.

MR. MORELAND. The only object of that is this: there might be two sets of officers claiming office at the same time. There is no law to enforce their duties until after the Legislature meets, and therefore the old officers could hold over until the new officers were inducted into office, and this was inserted to avoid paying two sets of officers at the same time. Probably the word "inducted," would express the meaning better than the word "installed."

MR. VAN DYKE. I concur with Judge Belcher, these words ought to be stricken out.

THE PRESIDENT. The question is on the motion to strike out.

Carried.

MR. SHOEMAKER. Mr. President: I offer an amendment.

THE SECRETARY read:

"Amend section four by striking out the words 'provided any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State.'"

MR. SHOEMAKER. Mr. President: The object of this is this: this Convention has no control over the Postmasters of this State.

MR. WEBSTER. It is absolutely essential that some mode be provided for the distribution of the documents which are not called for, or they will all go to the dead letter office.

The amendment was lost.

MR. ANDREWS. Mr. President: I offer an amendment to section eight.

THE SECRETARY read:

"Strike out 'day to day until all the returns are received, or until six postponements have been had,' and insert 'time to time, until all the returns are received, or until the second Monday after said election.'"

MR. ANDREWS. That compels the Board to adjourn from day to day, when, in many of the counties, the Board may know to a certainty that the returns will not be received for several days, thus entailing a useless expense.

THE PRESIDENT. The question is on the amendment of the gentleman from Shasta, Mr. Andrews.

Adopted.

MR. MORELAND. Mr. President: I move to strike out the word "State," in the last line, and insert "other."

Lost.

MR. HERRINGTON. Mr. President: I offer an amendment to section ten.

THE SECRETARY read:

"Add and insert after the word 'provided,' in line six, the following: 'but the first terms, after the adoption of this Constitution, of the offices of County Clerks, Sheriffs, Recorders, Treasurers, Assessors, and Collectors, District Attorneys, Coroners, Public Administrators, and County Superintendents of Common Schools, of the several counties, shall commence at the expiration of the terms, as now provided by law, of their respective predecessors in office.'"

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: The necessity for this provision will appear when it is once considered that at the time the new officers will go into office it will be at the most busy season of office work. To make the change at that time would be difficult, and would work a hardship upon all the officers whose terms do not expire until the first of March following. It makes no difference with the new officers, who hold their offices for about eleven months; and the convenience of the State, and the various counties in the State, ought to be consulted rather than the convenience of the incoming officers.

MR. BEERSTECHER. We have had the pleasure of voting down that amendment three times.

MR. HERRINGTON. Only once.

MR. BEERSTECHER. It is exactly the same amendment. I hope it will be voted down again.

MR. WALKER, of Tuolumne. Mr. President: I hope the amendment will be carried. It is necessary to make some sacrifices somewhere, and it is better for the new officers to have their terms shortened than for the State and counties to suffer the inconvenience that will follow.

MR. WHITE. I wish to call the attention of the Convention to the fact that the new officers, under this amendment, would only hold office for seven months, which is too short a time to go to the trouble and expense of an election.

MR. ROLFE. I think this amendment is unnecessary, because I do not believe these statutory officers are cut off by any provision of this Constitution, unless I am mistaken. They hold under the statute. There is no need of the amendment, unless I am very much mistaken.

THE PRESIDENT. The question is on the amendment of the gentleman from Santa Clara, Mr. Herrington.

Lost.

MR. BARBOUR. Mr. President: I offer an amendment to section ten.

THE SECRETARY read:

"SEC. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected at the first election under the same, and whose term of office is four years or over, shall be, respectively, one year shorter than the term provided for in this Constitution, and the term of all officers whose term of office is two years shall be, respectively, one year longer than the term provided for in this Constitution, except the members of the Assembly, whose first term of office shall be one year; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution, shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction, at the first election under this Constitution, shall be elected at the time and in the manner that State officers are elected."

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. President: The section of the report shortens the terms of all county officers, while this lengthens their terms by one year, and shortens the terms of four year officers to three years. I offer this amendment because I believe it is in the interest of good government, and founded on correct principles. Lest I should be accused of personal motives in offering it, I will say that I am not a candidate for any office, under this provision or any other provision of this Constitution. Now, sir, the Convention has gone ahead and provided for twelve-year terms and six-year terms, and when it comes to county officers they provide for terms of one year. These county officers will go out of office about the time they begin to get a knowledge of the duties of the office. I believe it is wrong in principle, and the best way out of the difficulty is to adopt this amendment. I don't know whether it is true or not, but gentlemen seem to be afraid that the party with which I am connected will obtain control of the State, and gain some advantage under this provision. If that be the case, all I have to say is that it is an extremely small motive to guide men in their course.

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

The ayes and noes were demanded by Messrs. Stedman, Barbour, Huestis, Wellin, and Joyce.

The roll was called, and the amendment rejected by the following vote:

AYES.

Barbour,	Gorman,	Nelson,
Barry,	Grace,	Neunaber,
Barton,	Harrison,	O'Donnell,
Beerstecher,	Herold,	O'Sullivan,
Belcher,	Herrington,	Reynolds,
Bell,	Hughey,	Ringgold,
Brown,	Hunter,	Smith, of San Francisco,
Condon,	Joyce,	Soule,
Davis,	Kenny,	Stedman,
Dean,	Kleine,	Swenson,
Dowling,	Larkin,	Tuttle,
Doyle,	Lavigne,	Vacquerel,
Dunlap,	Lindow,	Wellin,
Estey,	McCoy,	West,
Farrell,	Mills,	White,
Filcher,	Moffat,	Wickes,
Freud,	Morse,	Wyatt—51.

NOES.

Andrews,	Kelley,	Shafter,
Bigge,	Keyes,	Shoemaker,
Blackmer,	Lampson,	Shurtleff,
Boucher,	Larue,	Smith, of Santa Clara,
Burt,	Mansfield,	Smith, of 4th District,
Caples,	Martin, of Alameda,	Steele,
Casserly,	Martin, of Santa Cruz,	Stevenson,
Charles,	McCallum,	Stuart,
Crouch,	McComas,	Sweasey,
Eagon,	McConnell,	Thompson,
Edgerton,	McFarland,	Tinnin,
Estee,	McNutt,	Townsend,
Evey,	Moreland,	Tully,
Freeman,	Nason,	Turner,
Hager,	Ohleyer,	Van Dyke,
Hall,	Porter,	Van Voorhies,
Harvey,	Prouty,	Walker, of Tuolumne,
Heiskell,	Pulliam,	Waters,
Hitchcock,	Reddy,	Webster,
Holmes,	Reed,	Weller,
Howard, of Los Angeles,	Rhodes,	Wilson, of Tehama,
Howard, of Mariposa,	Rolfe,	Wilson, of 1st District,
Huestis,	Schell,	Winans,
Inman,	Schomp,	Mr. President—72.

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article, as amended, adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Dowling,	Herold,
Barbour,	Doyle,	Herrington,
Barton,	Dunlap,	Hitchcock,
Beerstecher,	Edgerton,	Holmes,
Belcher,	Estee,	Howard, of Los Angeles,
Bell,	Estey,	Howard, of Mariposa,
Biggs,	Evey,	Huestis,
Blackmer,	Farrell,	Hughey,
Boucher,	Filcher,	Hunter,
Brown,	Freeman,	Inman,
Burt,	Freud,	Jones,
Caples,	Gorman,	Kenny,
Casserly,	Grace,	Keyes,
Chapman,	Graves,	Kleine,
Charles,	Hager,	Larkin,
Condon,	Hall,	Larue,
Crouch,	Harrison,	Lavigne,
Davis,	Harvey,	Lindow,
Dean,	Heiskell,	Mansfield,

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Martin, of Alameda,	Rhodes,	Tully,
Martin, of Santa Cruz,	Reynolds,	Turner,
McCallum,	Rolfe,	Tuttle,
McComas,	Schell,	Vacquerel,
McConnell,	Schomp,	Van Dyke,
McCoy,	Shafter,	Van Voorhies,
McNutt,	Shoemaker,	Walker, of Tuolumne,
Mills,	Shurtleff,	Waters,
Moffat,	Smith, of Santa Clara,	Webster,
Morse,	Smith, of 4th District,	Weller,
Murphy,	Smith, of San Francisco,	Wellin,
Nason,	Soule,	West,
Nelson,	Steele,	Wickes,
Neunaber,	Stevenson,	White,
O'Donnell,	Stuart,	Wilson, of Tehama,
Ohleyer,	Sweasey,	Wilson, of First District,
O'Sullivan,	Thompson,	Winans,
Porter,	Tinnin,	Wyatt,
Prouty,	Townsend,	Mr. President—115.
Pulliam,		

NOES.

Kelley,	Stedman,	Swenson—4.
McFarland,		

The article was referred to the Committee on Revision and Adjustment.

MISCELLANEOUS SUBJECTS.

THE PRESIDENT. The next business in order is the consideration of the article on miscellaneous subjects, on second reading. The Secretary will read.

THE SECRETARY read the article as follows:

ARTICLE —.

MISCELLANEOUS SUBJECTS.

SECTION 1. The city of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding, unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each House, may provide, submitting the question of change to the people.

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

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

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

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

SEC. 4. All officers or Commissioners whose election or appointment is not provided for by this Constitution, and all officers or Commissioners whose office or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of said liens.

SEC. 16. When the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SEC. 17. Eight hours shall constitute a legal day's work on all public work.

SEC. 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

SEC. 19. Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of this Convention, including the per diem of the Delegates for the full term of said Convention.

SEC. 20. Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Tuesday after the first Monday in January next following their election.

THE PREVIOUS QUESTION.

MR. REDDY. Mr. President: I believe this is one of the most beautiful articles in the whole Constitution, and lest some one might attempt to mar its beauty, I now move the previous question. [Laughter.]

Seconded by Messrs. Morse, Waters, Hunter, and Mansfield.

THE PRESIDENT. The question is: Shall the main question be now put?

Upon the question: Shall the main question be now put? the ayes and noes were demanded by Messrs. Vacquerel, White, Grace, Wyatt, and Lindow.

The roll was called, and the Convention ordered the main question by the following vote:

AYES.

Barbour,	Herrington,	Reynolds,
Barry,	Holmes,	Rhodes,
Barton,	Howard, of Los Angeles,	Ringgold,
Beerstecher,	Howard, of Mariposa,	Shafter,
Bell,	Hunter,	Shoemaker,
Biggs,	Joyce,	Smith, of Santa Clara,
Blackmer,	Kenny,	Smith, of 4th District,
Brown,	Kleine,	Smith, of San Francisco,
Burt,	Larkin,	Soule,
Charles,	Larue,	Stevenson,
Condon,	Lindow,	Sweasey,
Crouch,	Mansfield,	Swenson,
Dean,	Martin, of Alameda,	Tully,
Dowling,	Martin, of Santa Cruz,	Turner,
Doyle,	McComas,	Tuttle,
Dunlap,	McFarland,	Walker, of Tuolumne,
Estey,	Moffat,	Waters,
Farrell,	Morse,	Weller,
Freeman,	Murphy,	Wellin,
Gorman,	Nelson,	White,
Grace,	O'Donnell,	Wickes,
Graves,	O'Sullivan,	Wilson, of Tehama,
Harrison,	Reddy,	Mr. President—70.
Herold,		

NOES.

Andrews,	Hughey,	Reed,
Belcher,	Inman,	Rolfe,
Boucher,	Johnson,	Schell,
Caples,	Jones,	Schomp,
Casserly,	Kelley,	Shurtleff,
Chapman,	Keyes,	Stedman,
Davis,	Lampson,	Steele,
Eagon,	Lavigne,	Stuart,
Edgerton,	McCallum,	Thompson,
Estee,	McConnell,	Tinnin,
Evey,	McCoy,	Townsend,
Filcher,	McNutt,	Vacquerel,
Freud,	Mills,	Van Dyke,
Garvey,	Moreland,	Van Voorhies,
Hager,	Nason,	Webster,
Hall,	Neunaber,	West,
Harvey,	Ohleyer,	Wilson, of 1st District,
Heiskell,	Porter,	Winans,
Hitchcock,	Prouty,	Wyatt—59.
Huestis,	Pulliam,	

THE PRESIDENT. The question is on the adoption of this article as a part of the Constitution. The Secretary will call the roll.

The roll was called, and the article adopted as a part of the Constitution by the following vote:

AYES.

Andrews,	Chapman,	Freeman,
Barbour,	Charles,	Freud,
Barry,	Condon,	Garvey,
Barton,	Dean,	Gorman,
Beerstecher,	Dowling,	Grace,
Belcher,	Doyle,	Graves,
Bell,	Dunlap,	Hall,
Biggs,	Eagon,	Harrison,
Blackmer,	Estee,	Harvey,
Boucher,	Estey,	Herold,
Brown,	Evey,	Herrington,
Burt,	Farrell,	Holmes,
Casserly,	Filcher,	Howard, of Los Angeles,

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Huestis,	Murphy,	Steele,
Hunter,	Nason,	Stevenson,
Joyce,	Nelson,	Sweasey,
Kenny,	Neunaber,	Swenson,
Kleine,	O'Donnell,	Thompson,
Lampson,	Ohleyer,	Tully,
Larkin,	O'Sullivan,	Tuttle,
Larue,	Porter,	Vacquerel,
Lavigne,	Prouty,	Van Dyke,
Lindow,	Reddy,	Van Voorhies,
Mansfield,	Reed,	Walker, of Tuolumne,
Martin, of Alameda,	Rhodes,	Waters,
Martin, of Santa Cruz,	Ringgold,	Webster,
McCallum,	Rolfe,	Weller,
McComas,	Shafter,	Wellin,
McConnell,	Shoemaker,	West,
McCoy,	Shurtleff,	White,
McNutt,	Smith, of Santa Clara,	Wickes,
Mills,	Smith, of 4th District,	Wilson, of Tehama,
Moffat,	Smith, of San Francisco,	Wyatt,
Moreland,	Soule,	Mr. President—104.
Morse,	Stedman,	

NOES.

Caples,	Inman,	Schell,
Crouch,	Johnson,	Schomp,
Davis,	Jones,	Townsend,
Edgerton,	Kelley,	Turner,
Heiskell,	Keyes,	Wilson, of 1st District,
Hitchcock,	Pulliam,	Winans—19.
Hughey,		

The article was referred to the Committee on Revision and Adjustment.

REPORT FROM THE COMMITTEE ON REVISION.

MR. SHAFTER. Mr. President: The Committee on Revision and Adjustment have ready to submit a report on five of the articles submitted to them. I will read the report with the changes proposed by the committee, and explain them as I go along.

Number One—Preamble and Bill of Rights. The preamble we leave untouched. The first and second sections are untouched. In section three it is a mere transposition of two sentences. The fourth and fifth sections we left stand. In the sixth section we strike out the word "or," and insert the word "nor." In the eighth section, amend by striking out the words "indictment or by," and insert the word "examination" after the word "after," in the second line. Strike out the words "commitment" and "examination" where they occur in line three, and insert the word "commitment" after the word "and;" and after the word "magistrate," insert the words "or by indictment, with or without such examination and commitment;" and strike out the word "but," in fourth line. The committee thought it necessary that the Grand Jury should have the right to file an indictment either before or after commitment or examination. In the twelfth section, the words "to be," in the last line, are stricken out. In section twelve, strike out the letter "s" after the word "causes."

MR. EDGERTON. I move that the report be printed, and that the several amendments to the article, as reported, be printed in italic, and words stricken out put in brackets.

MR. SHAFTER. In the seventeenth section, amend by inserting the word "acquisition" after the word "the," and the word "transmission" after the word "enjoyment," in the fourth line. The original section gives the right of possession, enjoyment, and inheritance, without giving the right of transmission.

MR. BARBOUR. I move the reported amendments be printed in the Journal.

THE PRESIDENT. If there are no objections it will be so ordered——

MR. CAPLES. And four hundred and eighty copies laid upon the desks of members.

MR. HAGER. I think the better way would be to adopt these recommendations at once, and then order it printed.

MR. EDGERTON. I move the Convention adjourn.

Lost.

[The printing of the partial report is deferred until the final report is made, in order to have it continuous.—ED.]

MR. EDGERTON. Mr. President: I insist upon my motion to print.

Carried.

MR. ESTEE. Mr. President: I wish to present a resolution with reference to instructing the committee in regard to the section on Chinese.

MR. HOWARD, of Los Angeles. Mr. President: I hope no instructions will be given until we see what the changes are.

ADJOURNMENT.

MR. O'DONNELL. I move we do now adjourn.

Carried.

And, at five o'clock P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes.

ONE HUNDRED AND FIFTY-FOURTH DAY.

SACRAMENTO, Friday, February 28th, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Fawcett,	Lewis,
Berry,	Finney,	McFarland,
Boggs,	Glascock,	Miller,
Campbell,	Gregg,	Noel,
Cowden,	Hager,	Overton,
Cross,	Hale,	Terry,
Dudley, of San Joaquin,	Hilborn,	Walker, of Marin.
Dudley, of Solano,	Laine,	

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

RESOLUTION—SCHEDULE.

MR. JONES. Mr. President: I offer a resolution.

THE SECRETARY read:

WHEREAS, In sections four and five of the article entitled "Schedule," of this Constitution, this Convention has provided for the printing and stitching, in pamphlet form, and mailing and distribution of copies of this Constitution, and for the printing and distribution of ballots by the State Printer,

Resolved, That the State Printer be and hereby is requested to inform this Convention, as soon as practicable, whether, and to what extent, he will undertake to execute the provisions of said sections four and five, imposing duties upon him.

Resolved, That the Secretary of this Convention immediately furnish the State Printer with a copy of this resolution, and of said sections four and five.

MR. JONES. Mr. President: The necessity of action like that on the part of the Convention, and of obtaining the information therein asked for, arises from the fact that sections four and five require that the State Printer shall perform duties which entail an expense; that is, not merely that printing shall be done, but we also have imposed upon him the duty of stitching and mailing the address to the voters of the State. Gentlemen will see in a moment that this involves a considerable amount of expense and labor not falling within the duties of the State Printer. For example, if one hundred and fifty thousand copies are to be addressed to the names of voters taken from the Great Register, the amount of labor will be very considerable. Hunting out the names and writing the addresses at the rate of one copy per minute, the time would be one hundred days of twenty-four hours each; and if three copies per minute should be supposed to be addressed, there would still be one hundred days at ten hours each. Then again, the postage will amount to some two thousand dollars, and the Convention has no funds with which to pay this postage, or to supply the printer with the means of paying it. Now, it is understood that there is a method by which the funds can be furnished and the work done, but as it is not within the direct duty of these officers, and as the Convention asks them to perform these duties, I think the Convention could not with prudence and propriety adjourn without some assurance that the work will be done. I have no doubt the State Printer will cheerfully give the assurance, and I hope that the resolution will be adopted.

MR. WEBSTER. Mr. President: I wish to suggest here that I think

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it is important that this resolution should be adopted. There have several members of the Convention interested themselves in this matter, and the whole scheme has been worked up satisfactorily, but that is no security to the Convention. The idea of this resolution is to get some official assurance from the State Printer that this work will be done in accordance with the promise which he has made to us. We have no doubt that he will do it. It is simply to get something official from that officer. We have made arrangements by which the Governor has agreed to furnish the necessary stamps to the State Printer, and the Printer has agreed that he will do all the work in his office.

The resolution was adopted.

CHINESE.

MR. EDGERTON. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the article on Chinese be and the same is hereby referred to the Committee on Revision and Adjustment, with special instructions to amend section (four) six of said article, so as to make the same conform to the suggestions of said committee, reported to the Convention on Thursday, February the twenty-seventh instant, and to report said article, as so amended, to this Convention without delay, for its action thereon.

MR. HOWARD, of Los Angeles. I rise to a point of order, that we should take up the report of the Committee on Revision and Adjustment seriatim, and dispose of each article and amendments as reported.

MR. EDGERTON. I am willing to wait until that time comes, then. Let it lie on the table temporarily.

So ordered.

REVISION AND ADJUSTMENT.

THE PRESIDENT. The question is on the report of the Committee on Revision and Adjustment. The committee has made a partial report and sent in five articles with certain changes. The Convention will take up that report.

MR. HOWARD. I move that it be accepted and taken up seriatim.

THE PRESIDENT. The acceptance adopts the report.

MR. HOWARD. I do not understand it so. However, I move that it be taken up.

So ordered.

THE SECRETARY read the first correction.

MR. VAN DYKE. I move that the correction be concurred in.

THE PRESIDENT. It will save a good deal of time if no objections are made to the corrections as read—to pass them, and then vote on the amendments to each article as a whole.

EXPLANATORY NOTE.

[NOTE—Owing to the manner in which the suggestions of the Committee on Revision and Adjustment were acted upon, it would be difficult for the reader to see their applications in many places without the article before them. We shall, therefore, insert each article, with the amendments of the Committee on Revision and Adjustment, as they were printed by order of the Convention. Words in brackets are stricken out, and words in italics are transpositions or additions.—REPORTERS.]

Following is the article on preamble and bill of rights as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE I.

DECLARATION OF RIGHTS.

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

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

SEC. 3. *The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.*

[SEC. 3. The Constitution of the United States is the supreme law of the land.]

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

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

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, *nor* [or] confined in any room where criminals are actually imprisoned.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, *expressed* in open Court [expressed], and in civil *actions* [cases] by the consent of the parties, signified in such manner as may be prescribed by law. In civil *actions* [cases], and cases of misdemeanor, the jury may consist *of twelve or* of any number less than twelve *upon which* [that] the parties may agree [upon] in open Court.

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by [indictment or by] information, after *examination* [commitment] and *commitment* [examination] by a Magistrate, *or by indictment with or without such examination and commitment*, as may be prescribed by law; [but a] *A* grand jury shall be drawn and summoned at least once a year in each county.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found, or information laid for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

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

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

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner [to be] prescribed by law.

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witnesses, from inability or other cause[s], will not attend at the trial.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into Court for, the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a Court of record, as shall be prescribed by law.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mense or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

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

SEC. 17. Foreigners of the white race or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the *acquisition*, possession, enjoyment, *transmission*, and inheritance of property as native-born citizens.

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

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

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

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

SEC. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 24. No property qualification shall ever be required for any person to vote or hold office.

THE SECRETARY read the amendments separately.

The report, consisting of amendments to sections three, six, seven, eight, twelve, thirteen, seventeen, and twenty concurred in, and the article referred to the Committee on Reporting and Printing for enrollment.

EXECUTIVE DEPARTMENT.

THE PRESIDENT. The question is on the report of the Committee on Revision and Adjustment on the article on executive department.

Following is the article as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE —.

EXECUTIVE DEPARTMENT.

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

SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Assembly, and shall hold

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his office four years from and after the *first* Monday after the first *day of* [Tuesday in] January subsequent to his election, and until his successor is elected and qualified.

SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding *his* [the] election, and attained the age of twenty-five years at the time of *such* [said] election.

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

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

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

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

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

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

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

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

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

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 14. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall *have only* [only have] a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President *pro tempore* [pro tem.] of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force *of* [in] the State.

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor, and *their* [whose] terms of office shall be the same as *that of* the Governor.

SEC. 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall [each,] at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum, *such* [said] compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; provided, however, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of *such* [said] officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

SEC. 20. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

THE SECRETARY read the amendments separately.

THE PRESIDENT. The question is on the adoption of this part of the report of the Committee on Revision and Adjustment.

MR. SHAFTER. This is article five, with the same caption as at present—executive department.

The report, consisting of amendments to sections two, three, four, fifteen, sixteen, seventeen, and nineteen concurred in.

The committee recommended that the article be numbered five.

Concurred in, and referred to the Committee on Reporting and Printing for enrollment.

PARDONING POWER.

THE PRESIDENT. The next question is on the report of the Committee on Revision and Adjustment on the article on pardoning power.

Following is the article as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE —.

PARDONING POWER.

SECTION 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, [and] its date, the date of the pardon *or* [and] reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

THE SECRETARY read the amendments.

THE PRESIDENT. The question is on concurring in this part of the report of the Committee on Revision and Adjustment.

The report was concurred in.

MR. SHAFTER. This is article seven.

MR. ROLFE. The pardoning power ought to be a part of the executive department. I move that it be made section twenty of the article on executive department, and that section twenty, as now adopted, be made section twenty-one.

MR. SHAFTER. That idea occurred to the committee and they discussed it, but the Convention have made it a separate article.

MR. JONES. I see no necessity for such a change; the article is a separate article of the Constitution.

MR. ROLFE. I withdraw my motion.

The article was numbered seven, and referred to the Committee on Reporting and Printing for enrollment.

MILITIA.

THE PRESIDENT. The next article is the militia.

The following is the article as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE —.

MILITIA.

SECTION 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as *it* [they] may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

SEC. 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms, either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

THE SECRETARY read the amendment.

THE PRESIDENT. The question is on concurring in the report of the Committee on Revision and Adjustment.

The report was concurred in, and the article numbered article eight.

Referred to the Committee on Reporting and Printing for enrollment.

CHINESE.

THE PRESIDENT. The next question is on concurring in the report of the Committee on Revision and Adjustment on the article on Chinese.

Following is the article as proposed to be amended by the Committee on Revision and Adjustment:

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ARTICLE —.

CHINESE.

SECTION 1. The Legislature shall prescribe *all* necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are, or [who] may become, vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and *from* aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; provided, that nothing contained in *this section* [the foregoing] shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SEC. 2. No corporation now existing, or hereafter formed, under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for *crime* [crimes].

Sec. 4. The presence of foreigners ineligible to become citizens of the United States is declared [herein] to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism, *is* [being] a form of human slavery, *and* is forever prohibited in this State, and all contracts for coolie labor *shall be* [are null and] void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State, for the removal of Chinese without the limits of such cities and towns, or *for* their location within prescribed portions of those limits, and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

THE SECRETARY read the amendments.

MR. EDGERTON. Mr. President: I now call up my resolution.

THE SECRETARY read:

Resolved, That the article on Chinese be and the same is hereby referred to the Committee on Revision and Adjustment, with special instructions to amend section (four) six of said article, so as to make the same conform to the suggestions of said committee, reported to the Convention on Thursday, February the twenty-seventh instant, and to report said article, as so amended, to this Convention, without delay, for its action thereon.

MR. STUART. Mr. President: I move to lay the resolution on the table.

MR. WHITE. I second the motion to lay on the table.

MR. SHAFTER. Mr. President: The committee have made no recommendation, but the object was to arrive at the intention of the Convention with regard to the words "or any other country."

MR. SHAFTER attempted to explain some defects in the section amid such confusion that he could not be heard.

MR. EDGERTON. In common with many other gentlemen, I misunderstood the gentleman yesterday. According to his statement now that committee has made no suggestion, and therefore that resolution has no ground on which to stand; I ask leave to withdraw it.

MR. HOWARD. Mr. President: I object to its withdrawal, and for the reason that this section obviously requires some revision in conformity with the suggestion of the Chairman of the committee.

THE PRESIDENT. I understand the gentleman to object to the withdrawal of the resolution?

MR. HOWARD. Yes; because I wish the section to be harmonized. It must go back to the committee. You cannot punish an act as criminal committed in a foreign country; it is simply absurd, and the Chairman of the committee is right. It would subject the Convention to all sorts of ridicule.

MR. STUART. Does not the world look upon it in that light now?

MR. HOWARD. The question is whether they look upon the gentleman in that light, and the point is that this section attempts to punish intention. The Chairman is perfectly right, and therefore I am in favor of its going to the committee.

MR. STUART. Mr. President: I oppose the return to the committee. I am opposed to any amendments or any explanations. All acts of that character fall by their own weight. An attempt to do wrong is always overdone. This article on Chinese has been discussed long enough. They knew at the time they were doing wrong. I protest against the passage of this article in the name of the State of California; for the honor of the United States Government, which has always been liberal and just; and in behalf of the manufacturers, the producers, and householders of the State of California, and in behalf of humanity.

MR. EDGERTON. I ask leave to withdraw my resolution.

MR. HOWARD. I object to it.

THE PRESIDENT. The question is on allowing the gentleman to withdraw his resolution.

The gentleman was allowed to withdraw his resolution, on a division, by a vote of 71 ayes to 25 noes.

MR. BARBOUR. Mr. President: I move that the portion of the report of the Committee on Revision and Adjustment relating to the article on Chinese be referred to the Committee on Chinese, with instructions to restore sections four and five of the original report.

MR. EDGERTON. Mr. President: I rise to a point of order. Upon reflection, I have come to the conclusion that the position of this article is precisely like that of a bill which has passed in the Legislature. It has been adopted; it has received the final sanction of this body, and it is not like an engrossed bill, which is subject to such a motion before the final passage of the bill. My point is, that this article has been finally acted upon by the Convention, adopted, and it is no longer open to amendment, or to recommitment to any committee.

MR. BARBOUR. Mr. President: I call the attention of the gentleman to the fact that we are now acting upon the report of the Committee on Revision and Adjustment. That report is the property of this house, and, as I understand it, the Convention can do as it pleases—either adopt the report, amend the report, rerefer the report to the Committee on Revision and Adjustment, or to the Committee of the Whole. If the report of the Committee on Revision and Adjustment were adopted, the position of the gentleman would be correct.

THE PRESIDENT. The article on Chinese has been adopted by the Convention as a part of the Constitution. They referred it to the Committee on Revision and Adjustment for the purpose of making grammatical corrections. That committee had no power to make any other corrections. They could not change the sense nor the substance of the article. The only way that the Convention could make any change upon it would be by the way of reconsideration, and no such motion could be entertained now as the time has expired. The only other way would be by unanimous consent. This article must stand as a part of the Constitution unless changed by unanimous consent. The motion of the gentleman from San Francisco is therefore out of order.

MR. LARKIN. I appeal from the decision of the chair.

Messrs. Barbour, Herrington, and Doyle seconded the appeal.

MR. DUDLEY. Mr. President: I would like to ask a question. If this can be so amended, then can the whole Constitution be?

THE PRESIDENT. Yes. The whole Constitution can be sent back, and every article of it.

MR. DUDLEY. I trust it will be voted down.

MR. ANDREWS. Mr. President: I desire to say this, that the position of the gentleman from Sacramento is not correct. This is not the position of a bill which has been passed upon its final reading. Its position is that of a bill which has passed its second reading. It has not passed upon its final passage, and a motion to recommit with special instructions is in order, and I am in hopes that the Chair will not be sustained.

MR. HOWARD. Mr. President: It must be clear to anybody who reflects, that if the decision of the Chair is not sustained, we have only just begun the work of this Convention.

THE PRESIDENT. The question is: Shall the decision of the Chair stand as the judgment of the Convention?

MR. CASSERLY. There is so much disorder that nothing can be heard.

THE PRESIDENT. The Convention will come to order.

MR. HOWARD. I move to lay the appeal on the table.

The ayes and noes were demanded by Messrs. Stedman, Larkin, Schomp, McCoy, and Harrison.

The roll was called, and the appeal laid on the table by the following vote:

AYES.

Belcher,	Keyes,	Schomp,
Biggs,	Lampson,	Shafter,
Blackmer,	Larue,	Shoemaker,
Boucher,	Mansfield,	Shurtleff,
Caples,	Martin, of Alameda,	Smith, of Santa Clara,
Casserly,	Martin, of Santa Cruz,	Smith, of 4th District,
Chapman,	McCallum,	Stevenson,
Charles,	McComas,	Stuart,
Crouch,	McConnell,	Sweasey,
Dunlap,	McNutt,	Swing,
Edgerton,	Mills,	Thompson,
Estee,	Morse,	Townsend,
Estey,	Murphy,	Tully,
Freeman,	Nason,	Turner,
Garvey,	Ohleyer,	Van Dyke,
Graves,	Porter,	Van Voorhies,
Hall,	Prouty,	Walker, of Tuolumne,
Harvey,	Pulliam,	Waters,
Hitchcock,	Reddy,	Weller,
Holmes,	Reed,	West,
Howard, of Los Angeles,	Rhodes,	Wilson, of 1st District,
Howard, of Mariposa,	Rolfe,	Winans,
Huestis,	Schell,	Wyatt—70.
Johnson,		

NOES.

Andrews,	Grace,	Nelson,
Ayers,	Hale,	Neunaber,
Barbour,	Harrison,	O'Sullivan,
Barry,	Heiskell,	Reynolds,
Barton,	Herold,	Ringgold,
Beerstecher,	Herrington,	Smith, of San Francisco,
Bell,	Hughey,	Soule,
Brown,	Hunter,	Stedman,
Burt,	Inman,	Steele,
Condon,	Joyce,	Swenson,
Davis,	Kelley,	Tinnin,
Dean,	Kenny,	Tuttle,
Dowling,	Kleine,	Vacquerel,
Doyle,	Larkin,	Webster,
Evey,	Lavigne,	Wellin,
Farrell,	Lindow,	White,
Filcher,	McCoy,	Wickes,
Freud,	Moffat,	Wilson, of Tehama—56.
Gorman,	Moreland,	

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MR. HOWARD. Mr. President: I move now, sir, to recommit this report on Chinese to the Committee on Revision and Adjustment, with instructions to report it back in conformity with the suggestion of the Chairman of the committee, for final action of this Convention.

THE PRESIDENT. That is the same motion.

MR. MCCALLUM. Mr. President: I have written out a resolution of instruction which I will send up.

THE SECRETARY read:

"I move to recommit the article on Chinese to the Committee on Revision, with instruction to revise section four, as follows: In line four strike out the word 'Asiatic' and insert 'Chinese.' Strike out the sentence commencing with the word 'all,' in line six, and ending with the word 'prescribe,' in line eight, and insert: 'The organization of companies or corporations for the importation of Chinese coolies is hereby declared to be a felony, and the Legislature shall provide for the punishment of such crime.'"

MR. EDGERTON. Mr. President: I make the same point of order in regard to this motion.

THE PRESIDENT. It falls directly within the ruling already made by the Chair and the Convention. The question is on concurring in the report of the Committee on Revision and Adjustment.

The report was concurred in, and the article was referred to the Committee on Reporting and Printing for enrollment.

RESOLUTION.

MR. EDGERTON. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That Mr. Hiram Clock be allowed pay as Night Watchman of this Chamber and adjoining rooms, at the rate of four dollars per day, from the twenty-eighth day of October, eighteen hundred and seventy-eight, to the close of the session of this Convention.

Referred to the Committee on Mileage and Contingent Expenses.

REPORT.

MR. SHAFTER. Mr. President: The Committee on Revision and Adjustment and their clerk worked until about half past two o'clock this morning, and completed their action upon some articles except drawing up the report. If the Convention is prepared to receive a verbal report upon some of them, we can proceed with them. Upon the question of boundary the committee report that article without amendment, and recommend that it be constituted article twenty-one. There seems to be a typographical error in it. The date of the treaty should be May thirtieth, instead of May thirteenth.

THE PRESIDENT. If there be no objection the correction will be made. The article will go to the Committee on Reporting and Printing for enrollment.

The article on water and water rights was ordered to be numbered fourteen, and then referred to the Committee on Reporting and Printing for enrollment.

Four hundred and eighty copies of the report of the Committee on Revision and Adjustment, in the same form as previous report, was ordered printed.

RECESS.

At eleven o'clock and forty minutes A. M., on motion of Mr. Van Dyke, the Convention took a recess till three o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at three o'clock, President Hoge in the chair.

Roll called, and quorum present.

A QUESTION OF PRIVILEGE.

MR. MURPHY. Mr. President: I rise to a question of privilege. The following article appears in this morning's Record-Union:

"AN ACT OF BRUTAL DISCOURTESY.

"It was understood yesterday that the question of woman suffrage would come up again in the Convention, and the advocates of that measure had prepared themselves to speak upon it. For some time past the women of Sacramento and other parts of the State have been procuring petitions asking for the extension of the right of suffrage to their sex, and these petitions, numerously signed, had been presented to the Convention. In accordance with the parliamentary custom in such cases, Colonel Ayers had previously stated his desire to speak upon the question, and as a large number of ladies who were interested in the subject were in attendance, common courtesy would have demanded a respectful hearing of the petitions, and of the statements of their supporters. When the subject was reached, however, delegate Murphy sprang to his feet and moved the previous question, cutting off debate, and preventing the advocates of the proposition from saying anything. This Murphy has distinguished himself by similar acts, during such part of the session as he has been present, and in no other way. Apparently incapable of originating an idea himself; neither a speaker, a thinker, nor a worker; an absentee during about half the session, and doing nothing useful when present; he has learned just enough of parliamentary rules to enable him to move the previous question, and he has done this on several occasions when to do it was little short of an outrage. In the present case he has incurred, for the Convention, the responsibility for a piece of brutal discourtesy and unfairness. The women of Sacramento had a right to be heard on the question. Their petition was entitled to respectful treatment. Their advocates on the floor ought to have been allowed full latitude. So much liberty of remonstrance and appeal is allowed to all who live under a republican form of government, and no legislative body, and no individual legislator, could be warranted in refusing to accord them opportunity for making known their demands. The Convention is placed in a very mean and contemptible attitude when it undertakes to bulldose women, and though it is very probable that delegate Murphy does not know any better than to act like a boor, there are so many of his colleagues who possess greater delicacy and sense of propriety, that it is to be regretted they should be placed in so compromising a position by his unmannerly and discourteous behavior. It may now be said that the Convention was afraid to discuss woman suffrage, and that because it could not meet the arguments of its supporters in a manly fashion it took the coward's refuge of silencing its petitioners. It is to be hoped that the women of California will meet this insult to their sex in a spirited and effective way, and that every woman who values herself will henceforth do all she can to prove that the Convention has underrated woman's influence, by working against the new Constitution."

This is the first time in my short career as a public man that I have undertaken to reply to a newspaper article. I would not do it now, but the statement is so manifestly malicious, and so grossly unjust, that I would deem myself wanting in self-respect if I did not reply to it. In the first place, it starts out with the statement that Colonel Ayers was entitled to the floor. I don't know by what rule Colonel Ayers, a member of this body, was any more entitled to the floor than I was. In the next place, it is stated that the previous question cut off all amendments. It is well known that this question had been debated thoroughly in the Committee of the Whole and also in the Convention. I consider that, instead of being "an act of brutal discourtesy" on my part, that it was an act of brutal cowardice for a man to pen an article like that, and he deserves the contempt of every honorable man.

REPORT.

MR. WALKER, of Tuolumne, of Committee on Mileage and Contingent Expenses, presented the following report:

MR. PRESIDENT: The Committee on Mileage and Contingent Expenses have had under consideration the resolution offered by Mr. Beerstecher, to the effect that a warrant be issued to William Galt, Porter, for the amount of forty-five dollars, paid by him to William Lewis for rear porterage, and after a full examination into its merits recommend that it be indefinitely postponed.

The committee have also considered the resolution to grant pay to Hiram Clock, as Night Watchman of this chamber, of four dollars per day from the eighteenth day of October to close of session, and recommend that said Clock be allowed one ($1 00) dollar per night for his services as aforesaid.

WALKER, Chairman pro tem.

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

MR. EDGERTON. I think the gentleman is entitled to this sum. I hope the Chairman will make an explanation, so that the Convention will understand it.

MR. WALKER. It seems that one Porter retired and another stepped into his place. Two warrants have been regularly issued to Galt and Jones. Therefore, the committee could not see how the third Porter can possibly demand pay from the Convention.

MR. EDGERTON. I understand that these two Porters could not do all the work, for the reason that the gas was shut off at night, so that they had to wait till morning, and this money was paid out for assistance.

MR. WALKER. It is a fact that he has paid the money out.

MR. EDGERTON. He did it for the convenience and health of this body. They had one hundred and fifty-six spittoons to clean out every day, and a large amount of other work to do.

MR. WINANS. I am also aware of the facts which tend to show that this man was compelled, by the necessities of the case, and the circumstances, to pay out this money; and if he had not assumed the responsibility of so doing, the Convention would have been indignant at the neglect of the work. The laborer is worthy of his hire, and this resolution should be adopted.

MR. EAGON. I hope the Convention will pay this small bill, which has been well earned. I have known this man a long time, and he would not ask for it if it was not justly due.

THE PRESIDENT. The question is on the first resolution.

Adopted.

THE PRESIDENT. The question is on concurring with the committee on the second resolution.

Carried.

COMMITTEE ON ADDRESS.

THE PRESIDENT. In conformity with a resolution of this Convention, I have appointed the following a Committee on Address: James E. Murphy, William J. Graves, Marion Biggs, William Van Voorhies, Charles S. Ringgold, George W. Schell, A. C. Freeman, Robert Crouch, D. C. Stevenson, Henry K. Turner, Henry Larkin, Lucius D. Morse, S. A. Holmes, C. W. Cross, H. Mills, Patrick Reddy, Edward Evey, H. C. Rolfe, Jacob R. Freud, Joseph R. Weller, A. H. Chapman, G. A. Johnson, and James S. Reynolds.

MR. REYNOLDS. Mr. President: I move that the committee be discharged from further service. I understand that this resolution was passed some three or four days ago. It was reasonably well known that this Convention would be able to adjourn by to-morrow night. I can see no reason why that committee should not have been appointed so as to have been given due time to consider its duty and prepare an address. It is now too late for them to do so. That is the reason I move that the committee be discharged.

MR. REDDY. Mr. President: I think the remarks of the gentleman entirely uncalled for, because the members of this committee were to be selected from judicial districts, and, certainly, no one not perfectly familiar with the localities could have done any better.

MR. RINGGOLD. Mr. President: I am not aware to-day whether I shall vote to ratify the Constitution or not, and I most respectfully decline.

MR. WELLIN. I hope the motion to discharge this committee will prevail.

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MR. WELLER. I hope the motion will not prevail; it is better late than not at all.

MR. VACQUEREL. I hope the motion will prevail. The people will judge of our work by the work itself, and not by what we say about it.

THE PRESIDENT. The question is on the motion to discharge the committee.

Division was called for, and the motion prevailed by a vote of 77 ayes to 20 noes.

COMMUNICATION.

THE PRESIDENT presented the following communication from the Superintendent of State Printing:

OFFICE SUPERINTENDENT STATE PRINTING, SACRAMENTO, February 28th, 1879.

To Honorable J. P. Hoge, President Convention:

SIR: In reply to resolution this day adopted by your honorable body, respecting the duties imposed upon the Superintendent of State Printing by sections four and five of Schedule (the receipt of an official copy of which is hereby acknowledged), I will state it is my purpose to fully perform all the duties imposed upon me by the Convention to the best of my ability.

F. P. THOMPSON, Superintendent State Printing.

RESOLUTION.

MR. LARKIN. I offer a resolution.

THE SECRETARY read:

Resolved, That the Sergeant-at-Arms be and he is hereby authorized and directed, immediately on the final adjournment of this Convention, to take charge of and sell at public auction, all spittoons and stationery, and other personal property furnished to and left by the members thereof, and that he deliver the net proceeds of such sale to the Treasurer of State, taking his receipt therefor, to be by said Sergeant-at-Arms deposited with the Controller of State.

MR. EDGERTON. I move to add, "that the gentleman from El Dorado, Mr. Larkin, be appointed spittoon auctioneer." [Laughter.]

MR. TULLY. I move that the doors be included.

MR. LINDOW. I move to lay the resolution on the table.

Carried.

ADJOURNMENT.

MR. EDGERTON. I move that the Convention do now adjourn.

Carried.

And at three o'clock and forty minutes P. M., the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes.

ONE HUNDRED AND FIFTY-FIFTH DAY.

SACRAMENTO, Saturday, March 1st, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Fawcett,	Overton,
Boggs,	Finney,	Reed,
Cowden,	Gregg,	Swing,
Cross,	Hager,	Walker, of Marin,
Crouch,	Miller,	Waters.
Dudley, of San Joaquin,	Noel,	

LEAVE OF ABSENCE.

Indefinite leave of absence was granted Mr. Walker, of Marin.

THE JOURNAL.

MR. BEERSTECHER. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

COMMUNICATION.

THE PRESIDENT presented the following communication from the Secretary of State:

STATE OF CALIFORNIA, DEPARTMENT OF STATE, SACRAMENTO, March 1st, 1879.

Honorable J. P. Hoge, President Constitutional Convention:

DEAR SIR: Will you have the kindness to announce to the Convention, through your Secretary, that members returning stationery to this office, not broken, soiled, or otherwise injured, will receive due credit therefor, and the amount taken from their accounts.

Very respectfully,

THOMAS BECK, Secretary of State.

RESOLUTION.

MR. WHITE. Mr. President: I offer a resolution.

THE SECRETARY read:

WHEREAS, It will be necessary for certain of the officers of this Convention to remain for some days after the adjournment of the Convention, in order to file all papers and documents of this body and turn them over to the Secretary of State in proper shape,

Resolved, That the President be and he is hereby authorized to sign warrants for ten days' pay in favor of the Secretary and his Assistants; also, for ten days' pay in favor of the Minute and Journal Clerks, and for one week in favor of the Mail Carrier.

REVISION AND ADJUSTMENT.

THE PRESIDENT. The next order of business is on the report of the Committee on Revision and Adjustment on the article on the right of suffrage.

Following is the article as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State* [that no native of China shall vote at any election; provided further, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector; provided further, that no person hereafter convicted of the embezzlement or misappropriation of public money, while holding office or employed in the public service, shall ever exercise the privileges of an elector, or hold any office whatever in this State.]

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

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

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

SEC. 5. All elections by the people shall be by ballot.

The report of the committee was concurred in, and the article referred to the Committee on Reporting and Printing for enrollment.

THE PRESIDENT. The next question is on concurring in the report of the Committee on Revision and Adjustment, on the article on distribution of powers.

Following is the article as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE III.

DISTRIBUTION OF POWERS.

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

The report of the committee was concurred in, and the article referred to the Committee on Reporting and Printing.

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THE PRESIDENT. The next report is on the legislative department. The following is the article on legislative department as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

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

SEC. 2. The sessions of the Legislature [shall be biennial, and] shall commence at twelve o'clock M. on the first Monday after the first *day of* [Tuesday in] January next ensuing the election of its members, *and, after the election held in the year eighteen hundred and eighty, shall be biennial,* unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except *for* the first session [called] after the adoption of this Constitution, *for* which *they* may be allowed pay for one hundred days. And no bill shall be introduced, in either House, after the expiration of ninety days from the commencement of the first session, *nor after* [and of] fifty days after the commencement of each succeeding session, without the consent of two thirds of the members *thereof* [of said House].

SEC. 3. Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly after the adoption of this Constitution shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter, members of the Assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature.

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen, one year next before his election.

SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two from the odd numbered districts shall be vacated at the expiration of the second year, so that one half of the Senators shall be elected every two years; provided, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years.

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty Senatorial and eighty Assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Senatorial and Assembly districts. Each Senatorial district shall choose one Senator, and each Assembly district shall choose one member of Assembly. The Senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the Assembly districts shall be numbered from one to eighty in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of *such* [said] districts, no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts; nor shall a part of any county, or *of any* city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the Legislative districts; and the Legislature shall, at its first session after each census, adjust *such* [said] districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming *a part of* the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

SEC. 7. Each House shall choose its [own] officers, and judge of the qualifications, elections, and returns of its [own] members.

SEC. 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner, and under such penalties, as each House may provide.

SEC. 9. Each House shall determine the rule of its [own] proceeding, and may, with the concurrence of two-thirds of all the members elected, expel a member.

SEC. 10. Each House shall keep a Journal of its [own] proceedings, and publish the same, and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.

SEC. 11. Members of the Legislature shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 12. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any [other] place *other* than that in which they may be sitting. Nor shall the members of either House draw pay for any recess or adjournment for a longer time than three days.

SEC. 15. No law shall be passed except by bill. Nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House, unless, in case of urgency, two thirds of the House, where such bill may be pending, shall, by a vote of yeas and nays, [deem it expedient to] dispense with this provision. Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House.

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, two thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after if shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, *Chief Justice and Associate* Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

SEC. 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created, or the emoluments of which have been increased, during such term, except such offices as may be filled by election by the people.

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; provided, that officers in the militia, *who receive* [to which there is attached] no annual salary, [or] local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed *to hold* lucrative *offices.*

SEC. 21. No person convicted of the embezzlement or defalcation of the public funds of *the United States, or of* any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature shall provide by law for the punishment of embezzlement or defalcation as a felony.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State; provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged [or sick, or disabled] persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; provided further, that the State shall have, at any time, the right to inquire into the management of such institutions; provided further, that whenever any county, or city and county, or city, or town shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

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SEC. 23. The members of the Legislature shall receive for their services a [compensation,] per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either House shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed.

SEC. 24. Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal *actions* [cases].

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale *in this State* of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery [in this State]. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 27. When a Congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a Congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many Congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one Congressional district, shall be formed into one or more Congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining Assembly districts, to a contiguous county or counties, and form a Congressional district. In dividing a county, or city and county, into Congressional districts, no Assembly district shall be divided so as to form a part of more than one Congressional district, and every such Congressional district shall be composed of compact contiguous Assembly districts.

SEC. 28. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the Government, and of the institutions under the exclusive control and management of the State.

SEC. 30. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

SEC. 31. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money, or thing of value, to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph, *and* gas, [and water] corporations, and the charges by corporations or individuals for storage, *and* wharfage, [and water,] in which there is a public use, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

SEC. 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

SEC. 35. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, *who shall be* [proven to have been] influenced in his vote or action upon any matter pending before the Legislature, by any reward, or promise of future reward, shall be *deemed* guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office *or* [of] public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

The report of the committee was concurred in, and the article referred to the Committee on Reporting and Printing for enrollment.

THE PRESIDENT. The next report is on judicial department.

The following is the article as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by

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him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places *at which* [that] State officers are elected; and the term of office shall be twelve years, from and after the first Monday *after the first day* of January next succeeding their election; provided, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also, in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and [also,] all *other* writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; *of* [also in] actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; [also,] of all matters of probate, [and, also,] of divorce and for annulment of marriage, and *of* all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. *They* [Said Courts] shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; provided, that all actions for the recovery of the possession of, quieting the title to, or for the enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

SEC. 6. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; provided, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter, *and* [provided], that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election: provided, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco, at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do. But a cause in a Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant or their attorneys of record, approved by the Court, and sworn to try the cause.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; provided, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, *nor* [or] unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; provided, such powers, shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of *the* liens nor the value of the property amounts to three hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, [County Clerks, District Attorneys, Sheriffs, and other necessary officers,] and shall fix by law *his* [their] duties and compensation, which compensation shall not be increased or diminished during the term for which *he* [they] shall have been elected. *The* County Clerks shall be ex officio Clerks of the Courts of Record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and

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counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Court shall, severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable *monthly*, [quarterly,] except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, which shall receive four thousand dollars each.

SEC. 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

SEC. 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office.

SEC. 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

SEC. 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless *he shall* [they shall, severally,] take and subscribe an affidavit before an officer entitled to administer oaths, that no cause in *his* [their respective] Court[s] remains undecided that has been submitted for decision for the period of ninety days.

The report of the committee was concurred in.

MR. REYNOLDS. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the article on Judiciary be and is hereby referred to the Committee on Revision and Adjustment, with instructions to insert the following in place of sections two and three of said article, and report forthwith:

"SEC. 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices, who shall be elected by the qualified electors of the State at large, at the general elections, at the times and places that other officers are elected, and their term of office shall be ten years from and after the first Monday of January next succeeding their election; provided, that those elected at the first election shall, at their first meeting, so classify themselves, by lot, that one Justice shall go out of office at the end of one year, one at the end of three years, one at the end of five years, one at the end of seven years, and one at the end of nine years. The Justice having the shortest term to serve shall be the Chief Justice. If a vacancy occur in the office of any Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next ensuing general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of Justices shall be at the first general election after the adoption and ratification of this Constitution.

"SEC. 3. The Supreme Court shall always be open for the transaction of business. The presence of three Justices shall be necessary to transact any business, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. In the determination of causes all decisions of the Court shall be given in writing, and the grounds of the decision shall be stated."

MR. MURPHY. Mr. President: I rise to a point of order. The article having been adopted as a part of the Constitution, is not subject to further amendment.

THE PRESIDENT. The point of order is well taken. The resolution is out of order.

MR. REYNOLDS. I appeal from the decision of the Chair.

The appeal was seconded by Messrs. Grace, Farrell, and Stedman.

MR. DUNLAP. Mr. President: I move to lay the appeal on the table.

THE PRESIDENT. The Chair will state the grounds upon which he rules that this resolution is out of order. This article on the judicial department has been adopted as a part of the Constitution by the Convention. We have adopted the report of the Committee on Revision and Adjustment. There is no mode of amending this article except by a reconsideration, and the time has gone by for any reconsideration. The Committee on Revision and Adjustment have no power to alter the sense or substance of any provision that the Convention has adopted. The same point was made yesterday, and the Convention sustained the ruling of the Chair.

The ayes and noes were demanded by Messrs. Barbour, Smith of San Francisco, Grace, Reynolds, and Stedman.

The roll was called, and the appeal laid on the table by the following vote:

AYES.

Ayers,	Hitchcock,	Ringgold,
Barton,	Holmes,	Rolfe,
Beerstecher,	Howard, of Los Angeles,	Schell,
Biggs,	Hughey,	Schomp,
Blackmer,	Hunter,	Shafter,
Boucher,	Inman,	Shoemaker,
Brown,	Johnson,	Shurtleff,
Burt,	Kenny,	Smith, of Santa Clara,
Campbell,	Keyes,	Smith, of 4th District,
Caples,	Lampson,	Soule,
Casserly,	Larue,	Steele,
Chapman,	Lewis,	Stevenson,
Charles,	Lindow,	Stuart,
Condon,	Mansfield,	Thompson,
Dean,	Martin, of Alameda,	Townsend,
Dudley, of Solano,	Martin, of Santa Cruz,	Tully,
Dunlap,	McCallum,	Turner,
Eagon,	McConnell,	Tuttle,
Edgerton,	McNutt,	Vacquerel,
Estee,	Murphy,	Van Dyke,
Estey,	O'Donnell,	Van Voorhies,
Freud,	Ohleyer,	Walker, of Tuolumne,
Garvey,	O'Sullivan,	Waters,
Glascock,	Porter,	Webster,
Gorman,	Prouty,	West,
Graves,	Pulliam,	Wilson, of Tehama,
Harvey,	Reddy,	Wilson, of 1st District,
Heiskell,	Reed,	Winans,
Hilborn,	Rhodes,	Wyatt—87.

NOES.

Andrews,	Jones,	Nelson,
Barbour,	Joyce,	Neunaber,
Barry,	Kelley,	Reynolds,
Bell,	Kleine,	Smith, of San Francisco,
Dowling,	Laine,	Stedman,
Doyle,	Larkin,	Sweasey,
Evey,	Lavigne,	Swenson,
Farrell,	McComas,	Terry,
Filcher,	McCoy,	Tinnin,
Grace,	Moffat,	Weller,
Harrison,	Moreland,	Wellin,
Herold,	Morse,	White—38.
Herrington,	Nason,	

The article on the judicial department was referred to the Committee on Reporting and Printing for enrollment.

THE PRESIDENT. The next report is that on education.

The following is the article on education as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE IX.

EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.

SEC. 2. A Superintendent of Public Instruction shall, at *each* [the first] gubernatorial election after the adoption of this Constitution, [and every four years thereafter], be elected by the qualified *electors* [voters] of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday *after the first day* of January next [after his election] *succeeding his election.*

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified *electors* [voters] thereof at *each* [the first] gubernatorial election, [and every four years thereafter]; provided, that the Legislature may authorize two or more counties to unite and elect one Superintendent for [all] the counties so uniting.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools which may be, or may have been, sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or *may* have been granted, by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year, in which a school [has] been established.

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SEC. 6. The public school system shall include [primary and grammar] common schools, and such high schools, [evening schools,] normal schools, and technical schools, as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund, and the State school tax, shall be applied exclusively to the support of [primary and grammar] common schools.

SEC. 7. The local Boards of Education, and the Boards of Supervisors, and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers, and the granting of teachers' certificates within their several jurisdictions.

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the [common] schools of this State.

SEC. 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several Acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs; provided, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two (and the several Acts amendatory thereof), shall be invested as provided by said Acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one College of Agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics,) to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the University on account of sex.

The amendments to sections two, three, and five were concurred in.

THE SECRETARY read the amendment to section six as follows:

"Amend section six. On line one, strike out the words 'primary and grammar,' and insert 'common;' and on line two, strike out the words 'evening schools;' and on fifth and sixth lines, strike out words 'primary and grammar,' and insert 'common' where 'primary and grammar' are stricken out."

MR. BLACKMER. Mr. President: I move that the Convention do not concur in the report of the Committee on Revision and Adjustment in their amendments to section six.

THE PRESIDENT. The same result will follow if the Convention refuses to concur; it needs no motion.

MR. BLACKMER. Mr. President: I understand that the committee take it for granted that the intention of the Convention is to restrict the use of this money to these elementary schools; that was the intention of the committee when it was inserted. Now, we want to make such a clear definition that there cannot be any possible mistake. I know that that is also the intention of the Committee on Revision and Adjustment, but there is a question in this State, although not in the Eastern States, as to what are common schools, and I am not alone in that understanding of it. I went to the State Superintendent this morning, and asked him if there was any description anywhere in their system of a common school whereby we could be sure that, if we wished to restrict the use of such money to any particular schools, there was such a definition as there could be no mistake about? He says no; that in this State, in all of the school system as understood by the State Superintendent and others, the term "common school" has no distinct definition. Now, I have very great respect for the common schools as they are understood in the Eastern States; it was there that I received what little education I have. But, sir, it is a fact, that if we wish to say that the money from this State shall be confined exclusively to the support of the elementary schools, we should describe these schools that are so clearly defined that there can be no mistake about them. Now, I contend that the primary and grammar schools are clearly defined in our entire school system, and common schools are not mentioned. There is no course of study laid down for common schools, and for that reason I am anxious to have the words "primary and grammar" retained. I want it so that the Legislature cannot say hereafter, that common schools shall include other studies beside the studies that are now taught in the primary and grammar schools, so that the State money cannot be used for that purpose. Now, for another reason, I wish that we should not concur in this, because the committee have struck out "evening schools." It is said by the Chairman of the committee, that the time of day does not alter the character of the school. I think the gentleman is incorrect, because the school law makes a distinctive school of it. The gentleman will find, that in San Francisco, the schools called evening schools are entirely a different class of schools than any other; they are designated evening schools. I want to say further, that when they attempted to establish these evening schools in San Francisco, that this objection, that there is no recognition of any such school anywhere, was raised by those who were opposed to them as an argument to prevent their being established. It was for that purpose, and that alone, that they were included here; so that if these schools were established in any place, then they would be recognized as a part of the public school system, and consequently under the control of the public school officers. These evening schools embrace a very different course of study from the day schools in order to adapt them to those who may attend, because they are not confined to those of any particular age. In my judgment they should be retained.

MR. LAMPSON. I most sincerely hope that the report of the committee will be carried out as recommended here. Now, section four of this article specifies particularly that all the money shall be appropriated for common schools. In section six, it specifies that this same money shall go to primary and grammar schools, and the committee has changed it and placed it in a position which is perfectly correct. If this amendment is not adopted I think that probably all the schools will draw from the fund which is designated to go to the common schools. I hope that the report of the committee will be concurred in.

MR. BARBOUR. Mr. President: I make the point of order that the amendments moved by the Committee on Revision and Adjustment are exactly within the decision of the Chair, that no substantial interference with the language or idea contained in the section, can be proposed or entertained. Now, I suppose that it is competent, even under the ruling of the Chair, which I oppose, for the committee to make an outside suggestion. Now, for instance, in section twenty-one, of the article on Legislative Department, they have taken a liberty which I indorse. They have provided a penalty for persons convicted of the embezzlement of funds of the United States, an amendment which I admit to be a good one; but I now raise the point of order that this amendment is a violation of what the Chair has declared to be the rule; that it is not competent for the committee to tamper with the substantial idea, or the sense or meaning of the section. The committee has struck out the evening schools. I suppose that by the same theory they might knock off the Railroad Commission or the Chief Justice of the Supreme Court.

MR. HERRINGTON. Mr. President: I believe that it is competent, so long as there is no change made in the substance of this whole article, to adjust it in any way to effect that result without tautology. Now, if we strike out the last clause of section six entirely, we will have done just precisely what we will accomplish by leaving it there. The latter part of section four declares that this money shall be inviolably appropriated to the support of common schools throughout the State. Now, if that be so, there can be no necessity for repeating it. It is simply a repetition of what has gone before, and I think that by unanimous consent of this House that could be stricken out. I make that motion, since it does not interfere with the sense of the article.

MR. BARBOUR. I made a point of order.

MR. VACQUEREL. Mr. President: This term "common school," that is put there by the Committee on Revision, is exactly the same amendment that has been voted down three or four times by this Convention. It is Mr. Laine's amendment. It has been voted down often enough, and I do not see why it should be brought up again here. I hope the section will remain as it was adopted by the Convention, and that the Convention will not concur in the amendments of this committee.

MR. WINANS. Mr. President: It appears to me that there is a clear and palpable distinction drawn by the language of the article on education itself, between the terms primary and grammar schools as here used and the term common schools; and I therefore submit that the point of order taken by the honorable gentleman from San Francisco is well taken. It is not only a material change in character and substance, but it is one which the Committee of the Whole distinctly repudiated and repelled. The question was then discussed, and discussed at great length and with much spirit. So far as the abolition of the phrase "evening schools" is concerned, I fail to see the propriety of such alteration. What was said with reference to evening schools by the gentleman from San Diego, and the distinction which existed between them and the ordinary primary and grammar schools, was correctly said. They are a different establishment. Now, I do not see any inconsistency between section four and section six. Section four, it is true, provides that the moneys of the State shall be inviolably appropriated to the support of common schools, and section six declares what are, in the meaning of the Constitution, common schools, and they are primary and grammar schools.

THE PRESIDENT. There is a point of order pending which the Chair is ready to decide. The Chair is of opinion that the point of order is well taken. He cannot undertake to determine that these amendments do not change the sense.

MR. SHAFTER. I appeal from the decision of the Chair.

Seconded by Messrs. Larkin and Walker of Tuolumne.

THE PRESIDENT. The Chair is perfectly willing to leave it to the Convention. The point of order is that the amendment reported changes the substance and sense of this section six. The Chair had considerable doubts upon the subject, but, upon examination and reflection, he entertains the idea that the point is well taken, and that these changes do effect a change in the sense of the article and in the substance of the article. An appeal has been taken from that decision. The question is: Shall the decision of the Chair stand as the judgment of the Convention?

MR. SHAFTER. Mr. President: I submit——

[Cries of "call the roll," and great confusion.]

MR. SHAFTER. I shall not be put down by this Convention. You may make all the noise you choose. The question is: Shall the decision of the Chair stand as the judgment of the Convention? If this Convention wishes to put such a stealing provision in the Constitution as this, they may do it; but not with my consent. I desire to know if these terms are synonymous. If they are, we simply change a word; if they are

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not synonymous, it covers up a steal of forty thousand dollars out of the funds of this State, and that is the intention of those who move it.

MR. BLACKMER. I say that the gentleman is entirely mistaken when he says there is an intention to steal forty thousand dollars. If the gentleman refers to me, and I happened to advocate the non-concurrence in this, I am certainly warranted in saying, that he is—entirely mistaken.

MR. SHAFTER. I do not think the gentleman would steal anything. The question raised by the decision of the Chair, as to whether there are two terms, "common" and "primary and grammar," are synonymous. Evening schools is an independent amendment, and has nothing to do with this question. What becomes of the evening schools I do not care. The committee went upon the ground that evening schools did not describe anything, any more than forenoon or afternoon schools would. The question is upon the "common," and "primary and grammar schools." Now, the gentleman from San Diego, Mr. Blackmer, undertakes to say, that the term primary and grammar merely defines the the term common schools, but the Chairman of the Committee on Education holds that the term common schools has a very different meaning, that it includes all kinds of schools, that there is a distinct and palpable difference between "common schools" and "primary and grammar schools"—I repeat his words, I think. If that is so, it is for the purpose of stealing these funds and appropriating it to schools that the Act of Congress did not apply it to. I know something about this term. It has been thrust in here by designing pedagogues, who want to take the fund which Congress designed for the common schools, for other schools. The Act of eighteen hundred and sixty-two was passed for the whole nation, not for California. That Act donated five hundred thousand acres of land for the support of "common" schools.

MR. BARBOUR. I made the point of order when striking out "evening schools," not on primary and grammar.

MR. SHAFTER. I did not so understand the gentleman. Evening school means nothing, and we struck it out because it did not. Now, according to the idea of the Chairman of the Committee on Education, a common school is one to which everybody has a right to go. Everybody can go to the University.

MR. WINANS. The University is not a common school; it is a college.

MR. SHAFTER. I begin to believe it is a place where money is to be spent.

MR. McCALLUM. Define the term "common school."

MR. SHAFTER. A school in which the rudimental branches of an English education are taught, and nothing else. I have taught common schools myself, and I know what they are. They do not mean teaching rhetoric.

MR. EDGERTON. Does this amendment, proposed by the Committee on Revision, change the sense of the section?

MR. SHAFTER. One of them says it does, and the other says it does not. I say that primary and grammar has no significance at all. They are just what these Boards of School Directors in the cities and towns have a mind to make them. Under the title of primary and grammar schools, which they claim are common schools, they ring in studies which never were intended to be included. They teach algebra—when I was a boy was algebra taught in the common schools? Never.

MR. HOWARD, of Los Angeles. As the Act of Congress donates this fund to common schools, if we divert it to any other would not Congress be authorized to withdraw the fund?

MR. SHAFTER. I have no doubt about it at all.

MR. EDGERTON. Mr. President: It seems to me that these amendments do change the sense of the section, and the Chair ought to be sustained. It is in the direct line of the decisions which the Chair has made before and been sustained in by the Convention.

MR. SHAFTER. Mr. Blackmer states that they mean the same thing.

MR. BLACKMER. I said that there was no definition of the common school in this State that was definite.

MR. SHAFTER. This money was donated for the common schools, and I want to see this State say that it shall go to the common schools.

MR. WINANS. Mr. President: So much confusion prevails that I do not know as I shall be heard. Gentlemen come here to attend to a public duty and they ought to do it, and not make this place resound with the hum of their noisy voices. Now, the terms primary and grammar are well understood and defined in our school laws, and well understood throughout the State. The primary school is a grade below the grammar school, and the grammar school is the grade below the high school. When it says that this money shall be appropriated to the primary and grammar schools, it means to the schools which are below the grade of these higher schools. which should be supported by local contributions alone. When the gentleman talks about a steal of forty thousand dollars, he makes a grave charge without supporting it by argument, and without explaining its meaning. Such arguments are not worthy of the intelligence and character of the source whence they come. Now, sir, I move to lay the appeal on the table.

Upon which motion the ayes and noes were demanded by Messrs. Herrington, Lindow, Keyes, Condon, and Stedman.

The roll was called, and the appeal laid on the table by the following vote:

AYES.

Barbour,	Charles,	Freud,
Barry,	Condon,	Graves,
Beerstecher,	Cross,	Harvey,
Bell,	Davis,	Herold,
Biggs,	Dowling,	Hughey,
Blackmer,	Doyle,	Joyce,
Campbell,	Dunlap,	Kenny,
Casserly,	Edgerton,	Keyes,
Chapman,	Estee,	Lavigne,
Lindow,	Reed,	Terry,
Martin, of Alameda,	Reynolds,	Thompson,
Martin, of Santa Cruz,	Rhodes,	Townsend,
McCoy,	Rolfe,	Tully,
McNutt,	Schell,	Vacquerel,
Morse,	Shoemaker,	Van Dyke,
Murphy,	Shurtleff,	Van Voorhies,
Nason,	Smith, of San Francisco,	Webster,
Nelson,	Soule,	Weller,
Neunaber,	Stedman,	Wickes,
O'Donnell,	Steele,	Wilson, of Tehama,
O'Sullivan,	Stevenson,	Wilson, of 1st District,
Pulliam,	Stuart,	Winans,
Reddy,	Swenson,	Wyatt—69.

NOES.

Andrews,	Herrington,	Mills,
Ayers,	Hilborn,	Moffat.
Barton,	Hitchcock,	Moreland,
Belcher,	Holmes,	Ohleyer,
Boucher,	Howard, of Los Angeles,	Porter,
Brown,	Howard, of Mariposa,	Prouty,
Burt,	Huestis,	Ringgold,
Caples,	Hunter,	Schomp,
Dean,	Inman,	Shafter,
Dudley, of Solano,	Jones,	Smith, of Santa Clara,
Eagon,	Kelley,	Smith, of 4th District,
Estey,	Laine,	Sweasey,
Evey,	Lampson,	Tinnin,
Farrell,	Larkin,	Turner,
Filcher,	Larue,	Tuttle,
Garvey,	Lewis,	Walker, of Tuolumne,
Glascock,	Mansfield,	Waters,
Gorman,	McCallum,	Wellin,
Grace,	McComas,	West,
Harrison,	McConnell,	White—61.
Heiskell,		

THE PRESIDENT. The question is on concurring in the amendment of the committee to section six.

The Convention refused to concur.

THE PRESIDENT. The amendments are non-concurred in.

[Applause.]

THE SECRETARY continued the reading of the amendments.

MR. EDGERTON. Mr. President: I ask that the Sergeant-at-Arms be sent to this quarter of the house to arrest fifteen or twenty members, for the purpose of restoring order.

THE PRESIDENT. The Sergeant-at-Arms will see that the members are all seated.

The amendment of the committee to section eight was ruled out of order on the same ground.

MR. WILSON. Mr. President: It strikes me that in section eight the word "common," in the last line, should be made "public." I make the motion to strike out "common" and insert "public."

THE PRESIDENT. It can be done by unanimous consent.

MR. BROWN. I object.

MR. TULLY. I object.

THE PRESIDENT. Objections being made, it cannot be done.

MR. McCALLUM. I make the point of order that it is perfectly legitimate revision to strike out the word "common" and insert the word "public." This Convention has now control over the matter of revision.

THE PRESIDENT. That question has been denied.

MR. McCALLUM. I appeal from the decision of the Chair.

THE PRESIDENT. Nobody joins you in the appeal.

MR. SHAFTER. If the Convention will allow me to put in the word——

MR. TULLY. No.

MR. SHAFTER. That is the end of it then.

The article was referred to the Committee on Reporting and Printing for enrollment.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

THE PRESIDENT. The Secretary will take up the next report.

Following is the article as reported by the Committee on Revision and Adjustment:

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

SECTION 1. There shall be a State Board of Prison Directors to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency,

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or neglect of duty. All other officers and employés of the prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

SEC. 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

The article was referred to the Committee on Reporting and Printing for enrollment.

CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

THE PRESIDENT. The next article is on city, county, and township organization.

FoHowing is the article as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE XI.

CITIES, COUNTIES, AND TOWNS.

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

SEC. 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State; and by general laws shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and, whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession.

SEC. 6. Corporations for municipal purposes shall not be created by special laws; but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by [such] general laws.

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or Houses of Legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for *the term of* two years. Any [casual] vacancy *occurring* in the office of Supervisor, in either Board, shall be filled by the Mayor or other chief executive officer.

SEC. 8. Any city containing a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years, qualified electors thereof to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or chief executive officer of such city, and the other to the Recorder of Deeds of the county. Such proposed charter shall then be published in two daily papers of [largest] general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each House, it shall become the charter of such city, or if such city be consolidated with a county [in government], then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of Deeds of the county, among the archives of the city, [and thereafter] all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

SEC. 9. The compensation [or fees] of any county, city, town, or municipal officer, shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from *its* [their] or *their* [its] proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 12. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 13. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in way interfere with, any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 14. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, [and the public interests demands it,] appoint such officers.

SEC. 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall, immediately [on the receipt thereof,] be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SEC. 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 18. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for *it* [them respectively] for such year, without the assent of two-thirds of the qualified *electors* [voters] thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

SEC. 19. No public work or improvement of any description whatsoever shall be done or made in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be effected or benefited, shall be levied, collected and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any com-

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pany, duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.

The amendments were concurred in, and the article referred to the Committee on Reporting and Printing for enrollment.

CORPORATIONS OTHER THAN MUNICIPAL.

THE PRESIDENT. The next article is on corporations other than municipal.

The following is the article as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE XII.

CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

[SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.]

SEC. 3. Each stockholder of a corporation or joint stock association shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association. The Directors or Trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association during the term of office of such Director or Trustee.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued, in all Courts, in like cases as natural persons.

SEC. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. *No* [but] corporation, association, or individual shall [make,] issue, or put in circulation, as money, anything but the lawful money of the United States.

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 7. The Legislature shall not extend any franchise or charter, *nor* [or] remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the [equal] rights of individuals or the general well-being of the State.

SEC. 9. No corporation shall engage in *any* business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold [any real estate], for a longer period than five years *any real estate* except such as may be necessary for carrying on its business.

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from *the* liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law[s], nor without the consent of the persons holding the larger amount in value of the stock [first obtained] at a meeting called for that purpose, [first] giving sixty days' public notice, as may be provided by law.

SEC. 12. In all elections for Directors or Managers of [incorporated companies,] every stockholder shall have the right to vote, in person or by proxy, [for] the number of shares of stock owned by him for as many persons as there are Directors or Managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit: and such Directors or Managers shall not be elected in any other manner, except that members of cooperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

SEC. 13. The State shall not [subscribe to, or be interested in, the stock of, or] in any mannner loan its credit, *nor shall it subscribe to, or be interested in the stock of any company, association, or corporation* [to, any person, company, association, or corporation].

SEC. 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in and by whom; the transfers of [said] stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SEC. 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

SEC. 16. A corporation or association may be sued *in* [at] the county where the contract is made or is to be performed, or where the obligation or liability arises, or *the* breach occurs; or *in* [at] the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

SEC. 17. All railroad, canal, and other transportation companies *are declared to* [shall] be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SEC. 18. No President, Director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket by a member of the Legislature, or any public officer other than Railroad Commissioner[s], shall work a forfeiture of his office.

SEC. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority, in which shall be vested the power to regulate fares and freights [authorizing such change].

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation *of the same classes* of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

SEC. 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors *thereof* [of their respective districts] at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, *commencing on the first Monday after the first day of January next succeeding their election.* Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpœneas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies [and they shall keep their accounts according to such system]. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or

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who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever from any cause a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

SEC. 23. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

SEC. 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

THE SECRETARY read the amendment striking out section two.

MR. SHAFTER. Mr. President: That section out as tautology.

MR. HERRINGTON. Mr. President: I make the point of order that it was out of the power of the committee to strike out that section. These two sections are intended for different objects, and one goes farther than the other.

THE PRESIDENT. The Chair is of the opinion that the point of order is well taken, and that this amendment was not within the power of the Committee on Revision and Adjustment.

All other amendments concurred in, and the article referred to the Committee on Reporting and Printing for enrollment.

REVENUE AND TAXATION.

THE PRESIDENT. The next article is on revenue and taxation.

The following is the article as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE XIII.

REVENUE AND TAXATION.

SECTION 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things *real, personal, and mixed*, capable of private ownership [real, personal, and mixed]; provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.

SEC. 2. Land, and the improvements thereon, shall be separately assessed: Cultivated and uncultivated land of the same quality, and similarly situated, shall be assessed at the same value.

SEC. 3. Every tract of land containing *more than six hundred and forty acres* [within its boundaries more than one government section], and which has been *sectionized* [surveyed] by the United States Government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not *sectionized* [surveyed] by the United States Government.

SEC. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district, in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

SEC. 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

SEC. 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control at twelve o'clock meridian, on the first Monday of March.

SEC. 9. A State Board of Equalization, consisting of one member from each Congressional district in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, whose term of office after those first elected shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of [State] taxation. The Controller of State shall be ex officio a member of *the* [said] Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of [county] taxation; provided, *such* [said] State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe, as to the county assessments, and under such rules of notice as the State Board may prescribe, as to the action of the State Board, to increase or lower the entire assessment roll, or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

SEC. 10. *All property, except as hereinafter in this section provided, shall be assessed in the county, city, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State,* [The franchise, roadway, roadbed, rails, and rolling stock of all railroads in this State, operated in more than one county,] shall be assessed by the State Board of Equalization, at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts; and all other property of railroads shall be assessed by the counties in which such property is situated.

SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner, as shall be prescribed by law.

SEC. 12. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

SEC. 13. The Legislature shall pass all laws necessary to carry out the provisions of this article.

THE SECRETARY read the amendments which were adopted, and the article referred to the Committee on Reporting and Printing for enrollment.

HARBORS, TIDEWATERS, AND NAVIGABLE STREAMS.

The following is the article on harbors, tidewaters, and navigable streams, as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE XV.

HARBOR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable *for the people thereof* [and that the people shall not be shut out from the same].

SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

Amendments adopted, and article referred to Committee on Reporting and Printing for enrollment.

STATE INDEBTEDNESS.

The following is the article on State indebtedness, as reported by the Committee on Revision and Adjustment:

ARTICLE XVI.

STATE INDEBTEDNESS.

SECTION 1. The Legislature shall not, in any manner, create any debt

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or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people. The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same.

Referred to the Committee on Reporting and Printing for enrollment.

LAND AND HOMESTEAD EXEMPTION.

The following is the article on land and homestead exemption as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE XVII.

LAND AND HOMESTEAD EXEMPTION.

SECTION 1. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.

SEC. 2. The holding of large tracts of land, uncultivated and unimproved, by individuals *or* [and] corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

SEC. 3. [Hereafter] Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

Amendments adopted and article referred to Committee on Reporting and Printing for enrollment.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

The following is the article on amending and revising the Constitution as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE XVIII.

AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two Houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon; and it shall be the duty of *the* [said] Legislature to submit such proposed amendment or amendments to the people, in such manner, and at such time, and after such publication as may be deemed expedient. Should more than one amendment*s* be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that *each* [they] can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the *qualified* electors [qualified to vote for members of the Legislature] voting *thereon* [therefor], such amendment or amendments shall become a part of this Constitution.

SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall *deem* [think] it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at *such* [said] election on the proposition for a Convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. *The* [Said] Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, *who* [which] shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election, at such place as the Legislature may direct. [The Constitution that may be agreed upon by such Convention shall be submitted to the people, at] *At* a special election, to be provided for by law, *the Constitution that may be agreed upon by such Convention shall be submitted to the people* for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

Amendments adopted, and article referred to Committee on Reporting and Printing for enrollment.

MISCELLANEOUS SUBJECTS.

The following is the article on miscellaneous subjects as proposed to be amended by the Committee on Revision and Adjustment.

ARTICLE XX.

MISCELLANEOUS SUBJECTS.

SECTION 1. The City of Sacramento is hereby declared to be the seat of Government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding, unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each House, may provide, submitting the question of change to the people.

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

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

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

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

SEC. 4. All officers or Commissioners whose election or appointment is not provided for by this Constitution, and all officers or Commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of *such* [said] liens.

SEC. 16. When the term of any officer or Commissioner is not provided for in this Constitution, the term of such officer or Commissioner may be declared by law; and, if not so declared, such officer or Commissioner shall hold his position as such officer or Commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SEC. 17. Eight hours shall constitute a legal day's work on all public work.

SEC. 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

SEC. 19. Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of *the* [this] Convention, *framing this Constitution*, including the per diem of the Delegates for the full term *thereof* [of said Convention].

SEC. 20. Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first *Monday* [Tuesday] after the first *day of* [Monday in] January next following their election.

Amendments adopted and article referred to the Committee on Reporting and Printing for enrollment.

SCHEDULE.

The following is the article on schedule as proposed to be amended by the Committee on Revision and Adjustment:

ARTICLE XXII.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect

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until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

SEC. 2. That all recognizances, obligations, and all other instruments, entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality *thereof*, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SEC. 3. *All Courts now existing save Justices' and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such Courts, as are abolished by this Constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the Courts provided for in this Constitution;* [The Legislature, at its first session after the adoption of this Constitution, shall provide for the transfer of all records, books, papers, and proceedings from such Courts as are abolished by this Constitution to the Courts provided herein;] and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

SEC. 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D., eighteen hundred and seventy-nine, cause to be printed at the State Printing office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the Post Office address of each registered voter; provided, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SEC. 5. The Superintendent of Printing of the State of California shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State five times the number of properly prepared ballots, for said election, that there are voters in said respective counties, with the words printed thereon, "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the new Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; provided, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SEC. 8. The officers of the several counties of this State whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SEC. 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election *is* [be] in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the days hereinafter specified.

SEC. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the term of all officers elected at the first election under the same shall be, respectively, one year shorter than the terms *as fixed by law or by* [as in] this Constitution [provided]; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law. Judicial officers, and the Superintendent of Public Instruction, shall be elected at the time and in the manner that State officers are elected.

SEC. 11. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of *their terms of office* [the terms of officers], and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

SEC. 12. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

Amendments adopted and article referred to Committee on Reporting and Printing for enrollment.

THE PRESIDENT. This concludes the Constitution, gentlemen. It has all gone to the Committee on Enrollment. The Convention should now pass upon the preamble.

MR. VAN DYKE. Mr. President: I move the previous question on the preamble.

THE SECRETARY read:

"PREAMBLE.

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

Adopted.

RESOLUTION.

MR. EDGERTON. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That so soon as the Constitution agreed upon shall be reported as correctly enrolled it shall be submitted to the Convention for its action thereon as a whole, and the vote shall be taken by ayes and noes; and, if adopted, that for the purpose of authenticating the same, it shall be signed by the President and Secretary of the Convention, and by every member thereof present. That the Secretary of State allow any member of this Convention who has not signed the Constitution to do so within thirty days after adjournment.

MR. CAMPBELL. Mr. President: I think that the resolution is somewhat defective, but we will have an opportunity during the recess hour to examine it, and I shall propose an amendment to it.

RECESS.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

[Mr. Murphy in the chair.]

RESOLUTION ON AUTHENTICATION.

MR. CAMPBELL. Mr. President: I offer a resolution as a substitute for the resolution offered by the gentleman from Sacramento, Mr. Edgerton.

THE SECRETARY read:

Resolved, That as soon as the Constitution agreed upon by this Convention shall have been declared to be correctly enrolled, the same shall be authenticated by the signature of the President and Secretary of the Convention.

Resolved further, That the members of the Convention be requested to affix their signatures to the Constitution when so authenticated.

MR. CAMPBELL. Mr. President: The resolution of the gentleman from Sacramento requires the vote to be upon the Constitution as a whole. My resolution omits that. It further provides that the authentication shall be by the President and Secretary. The Act calling the Convention makes no provision for authentication. It is therefore left to the discretion of this body. The other resolution requires that it should be authenticated, not only by the signatures of the officers, but by the signatures of the members—all the members present, I believe. Some of them might refuse to sign, and then some question might arise as to whether the Constitution had been properly authenticated or not. I propose to avoid all such questions.

MR. EDGERTON. Mr. President: During the recess I have taken some pains to look up precedents. I find it is the usual course to be signed by the President, and then attested by the Secretary. Then follows the signatures of members, indicating who were in favor and who were against the Constitution. Now, there is one marked difference between the resolutions. My resolution provides that the Constitution shall be voted on as a whole. I wish some gentleman would produce elementary authority as to the proper mode of proceding upon the final vote.

MR. CAMPBELL. My resolution does not touch that matter at all.

MR. EDGERTON. That is what I complain of. As far as I am concerned, I desire my constituents to know what my position is. As far as gentlemen refusing to sign it, why might not the President refuse to sign it, or the Secretary? It binds nobody.

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MR. MCCALLUM. Mr. President: I propose to offer this as an amendment to the amendment:

Resolved, That the vote shall be taken by ayes and noes on agreeing to and adopting the new Constitution when the same shall have been enrolled;

Second—That the Constitution shall then be authenticated by the President and Secretary of this Convention, and that the members be requested to sign the same.

Third—That members not now present may sign the same in the presence of the Secretary of State at any time within thirty days of this date.

The object in offering this amendment is this: I am in favor of the idea presented by my colleague. I have presented here three different propositions. I have looked up the precedents, and it seems to be the general practice to adopt the Constitution as a whole. Therefore I have embodied that which my colleague has left out. Now, my resolution is better than either of the others in that it provides that the Constitution shall be authenticated by the votes of all the members present. It could not be authenticated as they require unless every member present should see proper to sign it, and a question of its validity might be raised by some members refusing to sign it. This embraces the whole matter in three distinct propositions. I submit that this will be the better course to pursue.

MR. LAINE. Mr. President: I am satisfied from the reading of the Constitution that we must act on this as a whole, otherwise we have no instrument that we are authorized to submit to the people. I find upon examining various Constitutions that seems to have been the rule. I find that laid down by Jameson, in his work on "Constitutional Conventions." I think the original proposition of the gentleman from Sacramento is better than either of the substitutes.

MR. HOWARD, of Los Angeles. Mr. President: I submit that this Constitution is now adopted, and that if every member present was now to vote against it, it could not affect the result. Therefore it is that I favor the resolution of the gentleman from Alameda, Mr. Campbell. The first proposition would probably raise a question as to whether it had been authenticated if any of the members should fail to sign it. We do not choose to put ourselves in that position.

MR. TINNIN. I raise the point of order that the resolution offered by Mr. Edgerton is out of order, for the reason that it would allow of a change being made, and the President has ruled that no amendment can be made on third reading, and the Convention sustained that ruling.

THE CHAIR. The point of order is overruled.

MR. CAMPBELL. Mr. President: I hope the amendment of my colleague will not be adopted. These questions are not necessarily connected with one another. There seems to be a difference of opinion as to whether we are compelled to vote on the Constitution as a whole, or not. I want to separate the proposition from the question of authentication.

MR. MCCALLUM. I ask leave then to withdraw my resolution till the other is voted on.

Leave granted.

MR. ESTEE. Mr. President: I, for one, hope that there will be a resolution adopted whereby the whole of this Convention will vote upon the adoption or rejection of this Constitution. If you are for the Constitution, come up and vote for it. I am sure that at least two thirds of this Convention will be found in favor of it. I think we should adopt it as a whole; that is the way it is generally done, and I hope it may be done that way this time.

MR. VAN DYKE. Mr. President: I agree with the gentleman who has just taken his seat; I am also in favor of voting on it as a whole, but I object to the resolution of the gentleman from Sacramento in reference to the mode of authentication; the latter part of the resolution might raise a serious question as to the authentication of the instrument, because it requires the signature of every member present. I have no objection to men signing it in the Secretary of State's office, who are now necessarily absent, but that too might delay the publishing of the instrument and therefore I object to it.

MR. CROSS. Mr. President: If a majority of this Convention are not in favor of this Constitution, I think we had better not submit it to the people. If we are not willing to father the instrument, how can we expect the people to indorse it? The Constitution provides that we shall submit this instrument to the people, not in articles, but as a Constitution, and certainly we ourselves must adopt it, not by articles, but as a whole. I find that precedent is in favor of having the names of members attached. The Constitution of the United States itself was authenticated in that way, and I find that the Constitutions of nearly all the States are signed in that way. As to the proposition that part of the members would withhold their names when they are required for the purpose of authentication, seems to me absurd. The President himself might be opposed to the Constitution, and yet when his signature is necessary to authenticate it, are we to suppose that he will withhold it?

MR. GRACE. Mr. President: I am in favor of the resolution offered by Mr. Campbell; if he had not offered that, I should renew my motion to table the resolution of Mr. Edgerton. I am opposed to leaving this Constitution open for thirty days for members to come in and sign. I am in favor of this Constitution as a whole, and I am willing to say so now, though there are things in it which I opposed. Taken as a whole I think it is an improvement on the old; we have instituted some great reforms, and I want to see it adopted.

MR. BROWN. Mr. President: It appears to me this subject has been discussed very nearly enough. Now, I do not see why the President and Secretary should not be enough to authenticate it, and then we can extend the privilege to members of signing it. As to adopting it as a whole, who ever heard of the Legislature, after having passed a number of bills, winding up the session by declaring that those were the statutes of that year. I fully agree with the gentleman from Los Angeles in his views on this subject.

THE PREVIOUS QUESTION.

MR. HALE. Mr. President: I believe the members of this body are sufficiently enlightened, and are ready to vote, and I now move the previous question.

Seconded by Messrs. McConnell, Chapman, West, and Lindow.

THE CHAIR. The question is: Shall the main question be now put? Carried, by a vote of 65 ayes to 34 noes.

THE CHAIR. The question is on the adoption of the resolution offered by the gentleman from Alameda, Mr. Campbell.

The ayes and noes were demanded by Messrs. Lindow, Beerstecher, Grace, Doyle, and Van Dyke.

The roll was called, and the amendment adopted by the following vote:

AYES.

Barbour,	Hilborn,	Rolfe,
Barton,	Holmes,	Schell,
Beerstecher,	Howard, of Los Angeles,	Schomp,
Bell,	Howard, of Mariposa,	Shoemaker,
Blackmer,	Huestis,	Shurtleff,
Boucher,	Hughey,	Smith, of Santa Clara,
Brown,	Hunter,	Smith, of 4th District,
Burt,	Inman,	Smith, of San Francisco,
Campbell,	Joyce,	Soule,
Caples,	Kenny,	Stedman,
Chapman,	Keyes,	Stuart,
Charles,	Kleine,	Sweasey,
Condon,	Larkin,	Swenson,
Doyle,	Lindow,	Terry,
Dudley, of Solano,	Mansfield,	Thompson,
Evey,	Martin, of Alameda,	Tinnin,
Farrell,	Martin, of Santa Cruz,	Tuttle,
Filcher,	McCallum,	Van Dyke,
Freud,	McComas,	Van Voorhies,
Garvey,	Moffat,	Walker, of Tuolumne,
Glascock,	Moreland,	Waters,
Gorman,	Morse,	Webster,
Grace,	Murphy,	Wellin,
Graves,	Nelson,	West,
Hale,	O'Donnell,	White,
Harrison,	Ohleyer,	Wilson, of Tehama,
Heiskell,	Prouty,	Wyatt—83.
Herrington,	Rhodes,	

NOES.

Andrews,	Estey,	Porter,
Barry,	Herold,	Pulliam,
Biggs,	Hitchcock,	Reed,
Casserly,	Jones,	Ringgold,
Cross,	Kelley,	Shafter,
Davis,	Laine,	Steele,
Dean,	Larue,	Stevenson,
Dowling,	Lavigne,	Tully,
Dunlap,	Lewis,	Vacquerel,
Eagon,	McConnell,	Weller,
Edgerton,	McCoy,	Wickes,
Estee,	Neunaber,	Winans—36.

THE CHAIR. The question is upon the adoption of the resolution as amended.

Adopted.

RESOLUTION.

MR. EDGERTON. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That when the Constitution agreed upon by this Convention shall be declared correctly enrolled, the question of its adoption, as a whole, shall be submitted to the Convention, and the vote thereon shall be taken by ayes and noes.

Adopted unanimously.

RECONSIDERATION.

MR. LARUE. Mr. President: The resolution adopted this morning authorizes the President to sign warrants for three days' pay for the Secretary and Assistants, and the Journal Clerks. I wish to amend the resolution by inserting ten days instead of three, and insert "Assistant Journal Clerk."

MR. WHITE. I second the motion. There is a large amount of work to be done.

THE PRESIDENT. If there is no objection it will be offered as amended. The question is on the adoption of the resolution as amended.

Adopted.

RESOLUTIONS.

MR. BARTON. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the Superintendent of State Printing be and he is hereby requested to print eight copies of the revised new Constitution for each of the members of this Convention, the same to be delivered on Monday morning, March third, for distribution, or as soon as practicable.

MR. HITCHCOCK. I move to lay the resolution on the table.

Carried.

MR. WEBSTER. Mr. President: I offer a resolution.

THE SECRETARY read:

WHEREAS, The Superintendent of State Printing has signified his purpose to assume the duty and responsibility of printing and mailing the copies of the new Constitution in accordance with the provisions of section four of the article on schedule; and whereas, it is of the most vital importance that a full and complete distribution thereof be secured and accounted for; therefore, be it

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Resolved, That the State Printer be and is hereby placed in full charge and control of the work, and he is directed and required to take a receipt from the Postmaster of the City of Sacramento for the number of packages of this Constitution and of ballots so directed and mailed to each postoffice in the State, and the aggregate weight thereof, and file such receipts with the State Controller.

MR. WEBSTER. This is a matter of considerable responsibility, and it is eminently proper that it should pass. It will require a very large amount of stamps to send out this Constitution. It is necessary that there should be proper checks and balances in order that every dollar may be accounted for.

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

Adopted.

MR. WHITE. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That four hundred and eighty copies of the amended Constitution be printed and laid on the desks of members for their consideration, while the amended instrument shall be read at the Secretary's desk.

MR. FILCHER. Mr. President: I wish to enter my protest against this thing. This matter is all being done as fast as the printers can do it. The report of the Committee on Revision will come here and be laid upon our desks. I move to lay the resolution on the table.

Carried.

MR. TULLY. I offer a resolution.

THE SECRETARY read:

Resolved, That in the opinion of this Convention the adoption of the new Constitution would promote the happiness and prosperity of the people.

ADJOURNMENT.

MR. SCHELL. I move to adjourn.

Lost.

MR. LARKIN. I desire to have daylight to consider and read the Constitution in. I don't propose to trust any man or printing office, and I want everybody to read the Constitution by daylight. I move we adjourn until Monday morning.

THE CHAIR. That has been voted down once and is out of order.

MR. WATERS. I move the Convention now take a recess until seven o'clock.

MR. TULLY. Ayes and noes.

MR. STEDMAN. Ayes and noes.

MR. INMAN. I move we adjourn.

Upon which the ayes and noes were demanded by Messrs. Tully, Keyes, Grace, Doyle, and Moffat.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Hughey,	Rhodes,
Barton,	Hunter,	Rolfe,
Beerstecher,	Inman,	Schell,
Belcher,	Jones,	Schomp,
Bell,	Joyce,	Shoemaker,
Blackmer,	Kelley,	Shurtleff,
Burt,	Kenny,	Smith, of 4th District,
Campbell,	Keyes,	Smith, of San Francisco,
Charles,	Kleine,	Soule,
Condon,	Lampson,	Stedman,
Cross,	Larkin,	Steele,
Dowling,	Lewis,	Stevenson,
Doyle,	Lindow,	Stuart,
Dunlap,	Mansfield,	Sweasey,
Eagon,	Martin, of Alameda,	Swenson,
Edgerton,	Martin, of Santa Cruz,	Terry,
Evey,	McCallum,	Tinnin,
Filcher,	McConnell,	Turner,
Freud,	McCoy,	Vacquerel,
Garvey,	Moffat,	Van Voorhies,
Grace,	Moreland,	Webster,
Harrison,	Morse,	Weller,
Heiskell,	Nason,	Wellin,
Herold,	Nelson,	West,
Hilborn,	Neunaber,	Wickes,
Hitchcock,	O'Donnell,	White,
Holmes,	Ohleyer,	Winans,
Howard, of Los Angeles,	Porter,	Mr. President—85.
Howard, of Mariposa,		

And, at three o'clock and twenty minutes P. M., the Convention stood adjourned until Monday morning at half-past nine o'clock.

ONE HUNDRED AND FIFTY-SEVENTH DAY.

SACRAMENTO, Monday, March 3d, 1879.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

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

ABSENT.

Barnes,	Crouch,	McNutt,
Berry,	Eagon,	Miller,
Boggs,	Fawcett,	Noel,
Campbell,	Finney,	Overton,
Casserly,	Gregg,	Wilson, of 1st District.
Cowden,	Hale,	

THE JOURNAL.

MR. BEERSTECHER. I move the reading of the Journal be dispensed with and the same approved.

So ordered.

REPORT OF THE COMMITTEE ON REVISION AND ADJUSTMENT.

The Committee on Revision and Adjustment presented their final report as follows:

IN CONVENTION, SACRAMENTO, February 28th, 1879.

To the Honorable Joseph P. Hoge, President of the Constitutional Convention, State of California:

The Committee upon Revision and Adjustment have had under consideration the articles on preamble and bill of rights; suffrage; distribution of powers; legislative department; executive department; judicial department; pardoning power; militia; education; State institutions and public buildings; city, county, and township organization; corporations; revenue and taxation; water and water rights; harbors, tide waters, and navigable streams; State indebtedness; land and homestead exemption; mode of amending and revising the Constitution; Chinese; miscellaneous provisions; boundary; and schedule—have revised and adjusted the various sections thereof, and recommend the following changes of phraseology and arrangement.

The Committee recommend that the articles of the Constitution be arranged in the following order, and with the following titles:

1. Preamble and Bill of Rights.
2. Suffrage.
3. Distribution of Powers.
4. Legislative Department.
5. Executive Department.
6. Judicial Department.
7. Pardoning power.
8. Militia.
9. Education.
10. State Institutions and Public Buildings.
11. City, County, and Township Organization.
12. Corporations.
13. Revenue and Taxation.
14. Water and Water Rights.
15. Harbors, Tide Waters, and Navigable Streams.
16. State Indebtedness.
17. Land and Homestead Exemption.
18. Mode of Amending and Revising the Constitution.
19. Chinese.
20. Miscellaneous Provisions.
21. Boundary.
22. Schedule.

NUMBER ONE.—PREAMBLE AND BILL OF RIGHTS.

Section three amended to read as follows: "The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land."

Section 6—Amend by striking out the word "or," in line five, and insert the word "nor."

Section 7—Amend by striking out the word "expressed," after the word "Court," in fourth line, and insert the word "expressed," after the word "parties," in same line; by striking out the word "cases," in fifth line, and insert "actions;" and by striking out the word "cases," in sixth line, and insert the word "actions;" and by striking out the word "that," in seventh line, and inserting after the word "consist" the words "of twelve or," and after the word "twelve" the words "upon which;" and by striking out the word "upon," in eighth line.

Section 8—Amend by striking out the words "indictment or by," and insert the

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word "examination" after the word "after," in the second line; by striking out the words "commitment" and "examination" where they occur, in line three, and insert the word "commitment" after the word "and," and after the word "Magistrate" insert the words "or by indictment with or without such examination and commitment;" and by striking out the word "but," in fourth line.

Section 12—Amend by striking out the words "to be," in last line.

Section 13—Amend by striking out the letter "s" after the word "causes," in last line.

Section 17—Amend by inserting the word "acquisition" after the word "the," and the word "transmission" after the word "enjoyment," in the fourth line.

Section 20—Amend by striking out the word "or," and inserting the word "and," in second line.

NUMBER TWO.—ARTICLE ON SUFFRAGE.

Section 1—Amend by striking out all after the word "provided," in eighth line, and insert the following: "No native of China, no idiot, insane person, or person convicted of any infamous crimes, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State."

NUMBER THREE.—DISTRIBUTION OF POWERS.

Amend section one: On line two strike out word "the," and on fifth line strike out words "in the cases."

NUMBER FOUR.—LEGISLATIVE DEPARTMENT.

Amend section two: Strike out the words "shall be biennial and," on line one; and on line two strike out words "Tuesday in;" and after the word "members," on line three insert the words, "and after the election held in the year eighteen hundred and eighty shall be biennial;" and on line five, after the word "except," insert the word "for;" and on same line, strike out word "called;" and in line six, after word "Constitution," insert the word "for;" and in same line, after word "which," insert the word "they;" and in line seven strike out the words "the expiration of;" and in line eight strike out the words "and of," and insert the words "nor after;" and at the end of same line strike out word "after," and insert word "from;" and on line ten strike out words "of said House," and insert word "thereof;" on line two, after word "first," second occurring, insert words "day of."

Section 3—Amend so as to read:

"SECTION 3—Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly after the adoption of this Constitution shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter, members of the Assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature."

Amend section six: On line nine strike out word "said," and insert word "such;" and on line twelve insert after the word "or," first occurring, the words "of any;" and on line sixteen strike out word "said," and insert the word "such;" and on line twenty, after the word "forming," insert the words, "a part of."

Section 7—In first line strike out word "own;" and on line two strike out word "own."

Section 9—On line one change word "rule" to "rules;" strike out word "own," and change word "proceeding" to read "proceedings."

Section 10—On line one strike out word "own."

Section 14—On line two strike out word "other," and after word "place" insert word "other."

Section 15—On line six strike out words "deem it expedient to"

Section 18—On line two, after word "General," insert the words "Chief Justice and Associate."

Section 20—Strike out all of the section after the word "militia," in the third line, and after said word insert the following words—"who receive no annual salary, local officers and Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices."

Section 21—On line two, after word "funds," insert words "of the United States, or."

Section 23—On line two strike out word "compensation."

Section 25—On line seven strike out word "laws," and insert word "actions."

Section 26—On line two, after the word "sale," insert words "in this State," and on line four strike out such words.

Section 30—On line four strike out word "creed."

Section 33—At end of line two add word "and;" and on line three strike out words "and water;" and on line four, after word "storage," insert word "and;" and after word "wharfage" strike out words "and water."

Section 35—On line five strike out words "proven to have been," and insert words "who shall be;" and on line seven, after word "be" and before "guilty," insert word "deemed;" and on line nine strike out word "of," and insert word "or."

The committee recommend that section thirty-four be stricken out.

NUMBER FIVE.—EXECUTIVE DEPARTMENT.

Amend section two: On line three, after word "the," insert word "first;" and after the word "first" strike out words "Tuesday in," and insert instead thereof the words "day of."

Section 3—On line three strike out word "the," and insert word "his;" and on line four strike out "said," and insert "such."

Section 4—On line next to last strike out "said," and insert "such."

Section 15—On line four strike out words "only have," and insert "have only;" and on line seven make "pro tem." read "pro tempore."

Section 16—On last line strike out "in," and insert "of."

Section 17—On line three strike out "whose" and insert "their," and change "term" to "terms;" and on line four, also insert after word "as," the words "that of."

Section 19—On line two strike out word "each," and on line eleven strike out "said," and insert "such;" and on line thirteen, after word "office," insert words "provided, however;" and on line fifteen strike out "said," and insert "such."

NUMBER SIX.—JUDICIAL DEPARTMENT.

Amended as follows:

Section 3—In line three strike out the word "that," and insert in lieu thereof the words "at which;" in line four insert, between the word "Monday" and the word "of," the words "after the first day."

Section 4—Line ten, strike out the word "also," and insert, between the word "all" and the word "writs," the word "other."

Section 5—In line seven strike out the word "also," and insert in lieu thereof the word "of;" line eight, strike out the word "also;" line nine, strike out the words "and also," and insert, between the word "and" and the word "all," the word "of;" line thirteen, strike out the words "said Courts," and insert in lieu thereof the word "they."

Section 6—Line six, strike out the word "provided."

Section 10—Line six, strike out the word "or," and insert in lieu thereof the word "nor."

Section 11—Tenth line, between the word "of" and the word "liens," the word "the."

Section 14—Lines two and three, strike out the words "County Clerks, District Attorneys, Sheriffs, and other necessary officers;" line three, strike out the word "their," and insert in lieu thereof the word "his;" line four, strike out the word "they," and insert in lieu thereof the word "he;" line five, insert before the word "County" the word "The."

Section 17—Fourth line from the last, strike out the word "quarterly," and insert in lieu thereof the word "monthly."

Section 24—Line three, strike out the words "they shall severally," and insert in lieu thereof the words "he shall;" line four, strike out the word "their," and insert in lieu thereof the word "his."

NUMBER SEVEN.—ARTICLE ON PARDONING POWER.

Section 1—Amend by striking out the word "and," in line twelve, after the word "sentence," and the word "pardon," and insert "or" before the word "reprieve," in same line.

NUMBER EIGHT—ARTICLE ON MILITIA.

Section 1—Amend by striking out, in line two, the word "they," and insert "it" instead.

NUMBER NINE.—ARTICLE ON EDUCATION.

Amend section two: On line one strike out words "the first," and insert in their stead the word "each;" also, strike out on lines two and three the words "and every four years thereafter;" and on line three strike out word "voters," and insert word "electors;" also, insert on line five, after word "Monday," the words "after the first day;" and strike out all after the word "next," in last line, and insert the words "succeeding his election."

Amend section three: On line two strike out word "voters," and insert word "electors;" and on same line strike out words "the first," and insert word "each;" and on lines two and three strike out the words "and every four years thereafter;" and on last line of section strike out word "all."

Amend section four: On line five from end of section, by inserting between words "or" and "have" the word "may."

Amend section five: In line three strike out word "has"

Amend section six: On line one strike out words "primary and grammar," and insert "common;" and on line two strike out the words "evening schools;" and on fifth and sixth lines strike out words "primary and grammar," and insert "common" where "primary and grammar" are stricken out.

Amend section eight, on last line, by striking out the word "common."

NUMBER TEN.—STATE INSTITUTIONS AND PUBLIC BUILDINGS.

No amendments proposed by committee.

NUMBER ELEVEN.—CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

Amendments:

Section 6—Strike out the word "such," in the last line.

Section 7—Second line from the last, between the word "for" and the word "two," the words "the term of;" also, strike out the word "casual," and insert between the word "vacancy" and the word "in" the word "occurring."

Section 8—Line ten, strike out the word "largest;" lines seventeen and eighteen, strike out the words "in government;" line twenty-five, strike out the words "and thereafter."

Section 9—Line one, strike out the words "or fees."

Section 10—Line three, strike out the word "their" and insert in lieu thereof the word "its;" also, strike out the word "its" and insert in lieu thereof the word "their."

Section 14—Lines four and five, strike out the words "and the public interest demands it."

Section 16—Lines three and four, strike out the words "on the receipt thereof."

Section 18—Lines three and four, strike out the words "them respectively" and insert in lieu thereof the word "it;" also, strike out the word "voters," in line four, and insert in lieu thereof "electors."

NUMBER TWELVE.—CORPORATIONS.

Section 5—Amend on line three by striking out word "but" and inserting word "no;" and on line four strike out word "make."

Section 7—On line one strike out word "or," last occurring, and insert word "nor."

Section 8—On line next to last one strike out word "equal."

Section 9—On line one, after word "in," insert word "any;" and on line three strike out words "any real estate;" and on line four, after word "years," insert words, "any real estate."

Section 10—On line three, after word "from," insert word "the."

Section 11—On line four change word "law" to "laws;" on lines five and six strike out words "first obtained;" and on line six strike out word "first."

Section 12—On lines one and two strike out words "incorporated companies;" and on line three strike out word "for," first occurring.

Section 13—On lines one and two strike out words "subscribe to or be interested in the stock of or;" and also strike out all of the section after word "credit," on line two, and insert after word "credit" the words, "nor shall it subscribe to or be interested in the stock of any company, association, or corporation."

Section 14—Amend on next to last line by striking out word "said."

Section 16—On line one strike out word "at" and insert word "in;" and on line three, after word "or," insert word "the;" and on same line, after word "or," second occurring, insert word "in," in lieu of word "at."

Section 17—On line one strike out word "shall," and insert words "are declared to."

Section 19—On last line of section change word "Commissioners" to word "Commissioner."

Section 20—On last line of section strike out words "authorizing such change."

Section 21—On line three, after word "transportation," insert words "of the same classes."

Section 22—On line three strike out words "of their respective districts," and insert word "thereof;" and on line five, after word "years," insert words, "commencing on the first Monday after the first day of January next succeeding their election;" and on lines twenty-one and twenty-two strike out words, "and they shall keep their accounts according to such system."

NUMBER THIRTEEN.—ARTICLE ON REVENUE AND TAXATION.

Section 1—Amend section one, on line five, by inserting, after the word "things," the words "real, personal, and mixed;" on same line strike out the words "real, personal, and mixed," after the word "ownership."

Section 9—Amend section nine by striking out the word "State," before the word "taxation," on line seven, and insert, on same line, the word "the" for the word "said;" on line eleven insert "such" for "said," before the word "State"

Section 10—Amend section ten by striking out all in the first and second lines down to the word "shall," and insert the following: "All property, except as hereinafter in this section provided, shall be assessed in the county, city, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State;" on last two lines strike out all after the word "districts."

Section 12—This section becomes section number thirteen, the Convention having amended the article by adding another section, to be known as section number twelve.

NUMBER FOURTEEN—ARTICLE ON WATER AND WATER RIGHTS.

The committee recommend no amendments.

NUMBER FIFTEEN.—HARBORS, TIDE WATERS, AND NAVIGABLE STREAMS.

Amendments:

Section 2—First and second lines from the last strike out the words, "and that the people shall not be shut out from the same," and insert in lieu thereof the words, "for the people thereof."

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NUMBER SIXTEEN.—STATE AND MUNICIPAL INDEBTEDNESS.

Amendments:
Section 1—Strike out the word "some" where it first occurs in line five.

NUMBER SEVENTEEN.—LAND AND HOMESTEAD EXEMPTION.

Amendments:
Section 2—Line two, strike out the word "and" and insert the word "or."
Section 3—Line one, strike out the word "hereafter."

NUMBER EIGHTEEN.—FUTURE AMENDMENTS.

Amendments:
Change the title of the article from "Future Amendments" to "Mode of Amending and Revising the Constitution."
Section 1—Line five, strike out the word "said," and insert in lieu thereof the word "the;" strike out the word "amendment," where it occurs in line eight, and insert the word "amendments," at the beginning of said line eight and between the word "more" and the word "than;" line nine, strike out the word "they," and insert in lieu thereof the word "each;" line eleven, insert the word "qualified" between the word "the" and the word "electors;" lines eleven and twelve, strike out the words "qualified to vote for members of the Legislature;" line twelve, strike out the word "therefor," and insert in lieu thereof the word "thereon."
Section 2—Line two, strike out the word "think," and insert in lieu thereof the word "deem;" line four, strike out the word "said," and insert in lieu thereof the word "such;" line six, strike out the word "said," and insert in lieu thereof the word "the;" line eight, strike out the word "which," and insert in lieu thereof the word "who;" strike out the words "the Constitution that may be agreed upon by such Convention shall be submitted to the people," where they occur in lines eleven and twelve, and insert the same words between the word "law" and the word "for," in line thirteen.

NUMBER NINETEEN.—ARTICLE ON CHINESE.

Section 1—Amend by striking out the word "who," in third line, and the words "the foregoing," in ninth line, and by inserting the word "all," in the first line after the word "prescribe;" the word "from," in fifth line after the word "and;" the word "provided," after the word "condition," in the eighth line, and the words "this section," after the word "in," in ninth line.
Section 3—Amend by changing the number of the word "crimes," to "crime," in last line.
Section 4—Amend by striking out the word "herein," in second line; the word "being," in fourth line; the words "are null and," in fifth line, and by inserting the word "is," after the word "coolieism," in fourth line; and the word "and" after the word "slavery," in same line; the words "shall be," after the word "labor," in fifth line; and the word "for," after word "or," in the tenth line.

NUMBER TWENTY.—ARTICLE ON MISCELLANEOUS SUBJECTS.

Section 4—Amend section four by striking out "office," in third line, and inserting "offices" instead.
Section 15—Amend section fifteen by inserting in line five the word "such" for "said."
Section 19—Amend by striking out, in section nineteen, line two, the word "this" before the word "Convention," and insert in lieu thereof the word "the;" also, in same line, after the word "Convention," insert the words "framing this Constitution;" strike out, in line three, "of said Convention," and insert "thereof."
Section 20—Amend by striking out, in line four, the word "Tuesday," and insert the word "Monday;" and in last line strike out "Monday in," and insert "day of," in lieu thereof.

NUMBER TWENTY-ONE.—ARTICLE ON BOUNDARY.

Section 1—Amend section one by striking out the word "thirteenth," in line nine, and insert "thirtieth" instead.

NUMBER TWENTY-TWO.—SCHEDULE.

Amendments:
Section 2—Line five, insert between the word "municipality" and the word "and," the word "thereof."
Section 3—Strike out all down to and including the word "herein," in line four, and insert in lieu thereof the following matter: "All Courts now existing, save Justices and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such Courts as are abolished by this Constitution shall be transferred on the first day of January, eighteen hundred and eighty, to the Courts provided for in this Constitution."
Section 9—Line seven, strike out the word "be," and insert in lieu thereof the word "is;" change "day" to "days," in second line from the last.
Section 10—Line four, strike out the words "as in," and insert in lieu thereof the words "as fixed by law or by;" strike out, on fourth line, the word "provided."
Section 11—Strike out, on sixth line, the words "the terms of officers," and insert "their terms of office."
All of which amendments, corrections, and alterations are indicated and marked upon copies of said articles and proposed amendments, herewith submitted.

J. McM. SHAFTER, for Committee.

THE NEW CONSTITUTION.

MR. AYERS. Mr. President and Gentlemen of the Convention: I hold in my hand the Constitution of the State of California, adopted by this Convention, correctly enrolled upon parchment.

THE PRESIDENT. Gentlemen will please come to order; members will be seated.

MR. AYERS. I beg leave to submit the same to this honorable body for such further action as they may deem proper.

THE PRESIDENT. I understand the Chairman of the committee to report this as correctly enrolled?

MR. AYERS. Yes, sir.

MR. WHITE. I have no Constitution on my desk.

THE PRESIDENT. Does the Convention desire to have the Constitution read?

[Cries of "Read, read!" "No, no!" "Read, read!"]

THE PRESIDENT. The Secretary will proceed to read the Constitution as it is enrolled, if there is no objection. The Convention will come to order, so that the reading can be heard all over the hall.

THE SECRETARY read:

CONSTITUTION OF THE STATE OF CALIFORNIA.

PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

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

ARTICLE I.

DECLARATION OF RIGHTS.

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

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

SEC. 3. The State of California is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

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

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

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, or confined in any room where criminals are actually imprisoned.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open Court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions, and cases of misdemeanor, the jury may consist of twelve, or of any number less than twelve upon which the parties may agree in open Court.

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by information, after examination and commitment by a Magistrate, or by indictment, with or without such examination and commitment, as may be prescribed by law. A Grand Jury shall be drawn and summoned at least once a year in each county.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact. Indictments found or information laid for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

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

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

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law. The Legislature shall have power to provide for the taking, in the presence of the party accused and his counsel, of depositions of witnesses in criminal cases, other than cases of homicide, when there is reason to believe that the witness, from inability or other cause, will not attend at the trial.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having been first made to or paid into Court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in a Court of record, as shall be prescribed by law.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud, nor in civil actions for torts, except in cases of willful injury to person or property; and no person shall be imprisoned for a militia fine in time of peace.

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

SEC. 17. Foreigners of the white race, or of African descent, eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens.

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

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported

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by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

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

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. The provisions of this Constitution are mandatory and prohibitory, unless by express words they are declared to be otherwise.

SEC. 23. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 24. No property qualification shall ever be required for any person to vote or hold office.

MR. MURPHY. I move to dispense with the further reading.

MR. BIGGS. I declare that we have a right to demand the reading of the bill.

MR. MURPHY. Did you ever see an enrolled bill read in your life?

MR. HAGER. Mr. President: I think this is a matter of so much importance I think it should be read before we act upon it.

[Cries of "ayes and noes," "read," "no, no," etc.]

MR. HOWARD, of Los Angeles. Mr. President: I take it for granted that we could not alter or change anything; therefore I see no sense in reading it over.

MR. BIGGS. By unanimous consent we can do anything.

MR. HOWARD. There will be no unanimous consent.

THE PRESIDENT. The question is on dispensing with the further reading.

MR. BIGGS. I rise to a point of order. When a member demands the reading of an instrument, they have a right to have it read.

THE PRESIDENT. The point of order is not well taken. The question is on dispensing with the reading.

The ayes and noes were demanded by Messrs. Murphy, Burt, Cross, Barry, and McFarland.

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

AYES.

Barbour,	Harvey,	Schell,
Barry,	Howard, of Los Angeles,	Shafter,
Beerstecher,	Lindow,	Shurtleff,
Belcher,	Mansfield,	Smith, of Santa Clara,
Boucher,	Martin, of Alameda,	Stevenson,
Brown,	Martin, of Santa Cruz,	Swing,
Caples,	McConnell,	Thompson,
Chapman,	McFarland,	Townsend,
Charles,	Mills,	Turner,
Doyle,	Moffat,	Vacquerel,
Dudley, of San Joaquin,	Murphy,	Van Voorhies,
Dunlap,	Neunaber,	Walker, of Marin,
Eagon,	O'Donnell,	Weller,
Estee,	Porter,	Wilson, of Tehama,
Estey,	Pulliam,	Winans,
Farrell,	Reddy,	Wyatt,
Garvey,	Reed,	Mr. President—53.
Graves,	Rhodes,	

NOES.

Andrews,	Holmes,	Ohleyer,
Ayers,	Howard, of Mariposa,	O'Sullivan,
Barton,	Huestis,	Prouty,
Bell,	Hughey,	Reynolds,
Biggs,	Hunter,	Ringgold,
Blackmer,	Inman,	Rolfe,
Burt,	Johnson,	Schomp,
Condon,	Jones,	Shoemaker,
Cross,	Joyce,	Smith, of 4th District,
Davis,	Kelley,	Smith, of San Francisco,
Dean,	Kenny,	Soule,
Dowling,	Keyes,	Stedman,
Dudley, of Solano,	Kleine,	Steele,
Edgerton,	Laine,	Stuart,
Evey,	Lampson,	Sweasey,
Filcher,	Larkin,	Swenson,
Freud,	Larue,	Tinnin,
Glascock,	Lavigne,	Tuttle,
Gorman,	Lewis,	Van Dyke,
Grace,	McCallum,	Walker, of Tuolumne,
Hager,	McComas,	Waters,
Hall,	McCoy,	Webster,
Harrison,	Moreland,	Wellin,
Heiskell,	Morse,	West,
Herold,	Nason,	Wickes,
Herrington,	Nelson,	White—79.
Hitchcock,		

THE PRESIDENT. The Secretary will continue the reading.

THE SECRETARY read:

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, every male person who shall have acquired the rights of citizenship under or by virtue of the treaty of Queretaro, and every male naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county in which he claims his vote ninety days, and in the election precinct thirty days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; provided, no native of China, no idiot, insane person, or person convicted of any infamous crime, and no person hereafter convicted of the embezzlement or misappropriation of public money, shall ever exercise the privileges of an elector in this State.

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

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

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

SEC. 5. All elections by the people shall be by ballot.

ARTICLE III.

DISTRIBUTION OF POWERS.

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

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

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

SEC. 2. The sessions of the Legislature shall commence at twelve o'clock M., on the first Monday after the first day of January next succeeding the election of its members, and, after the election held in the year eighteen hundred and eighty, shall be biennial, unless the Governor shall, in the interim, convene the Legislature by proclamation. No pay shall be allowed to members for a longer time than sixty days, except for the first session after the adoption of this Constitution, for which they may be allowed pay for one hundred days. And no bill shall be introduced, in either House, after the expiration of ninety days from the commencement of the first session, nor after fifty days after the commencement of each succeeding session, without the consent of two thirds of the members thereof.

SEC. 3. Members of the Assembly shall be elected in the year eighteen hundred and seventy-nine, at the time and in the manner now provided by law. The second election of members of the Assembly after the adoption of this Constitution shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty. Thereafter, members of the Assembly shall be chosen biennially, and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise ordered by the Legislature.

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly, and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State three years, and of the district for which he shall be chosen one year, next before his election.

SEC. 5. The Senate shall consist of forty members, and the Assembly of eighty members, to be elected by districts, numbered as hereinafter provided. The seats of the twenty Senators elected in the year eighteen hundred and eighty-two, from the odd numbered districts, shall be vacated at the expiration of the second year, so that one half of the Senators shall be elected every two years; provided, that all the Senators elected at the first election under this Constitution shall hold office for the term of three years.

SEC. 6. For the purpose of choosing members of the Legislature, the State shall be divided into forty Senatorial and eighty Assembly districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Senatorial and Assembly districts. Each Senatorial district shall choose one Senator, and each Assembly district shall choose one member of Assembly. The Senatorial districts shall be numbered from one to forty, inclusive, in numerical order, and the Assembly districts shall be numbered from one to eighty in the same order, commencing at the northern boundary of the State, and ending at the southern boundary thereof. In the formation of such districts, no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust such districts and reapportion the representation so as to preserve them as near equal in population as may be. But in making such adjustment no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators and Assemblymen shall be elected by the districts according to the apportionment now provided for by law.

SEC. 7. Each House shall choose its officers, and judge of the qualifications, elections, and returns of its members.

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SEC. 8. A majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

SEC. 9. Each House shall determine the rule of its proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member.

MR. EDGERTON. I move that the further reading be dispensed with. It is not possible that there can be any error in the Constitution to be corrected, for the copies which members are comparing it with were printed from the same forms of type as the enrolled copy from which the Secretary is reading.

MR. LARKIN. I want to hear the Constitution read, every word of it.

MR. HAGER. I am looking at the report of the Committee on Adjustment to see whether it corresponds.

MR. HERRINGTON. I rise to a point of order. This motion has been made and voted down.

THE PRESIDENT. Overruled. The question is on the motion to dispense with the reading.

MR. STEDMAN. Ayes and noes.

MR. LARKIN. Ayes and noes.

THE PRESIDENT. Gentlemen will come to order. Those desiring the ayes and noes will rise.

The ayes and noes were demanded by Messrs. Cross, Burt, Larkin, Stedman, and Barton.

The roll was called, and the motion prevailed by the following vote:

AYES.

Barbour,	Howard, of Los Angeles,	Schell,
Beerstecher,	Joyce,	Shafter,
Belcher,	Kenny,	Shurtleff,
Bell,	Keyes,	Smith, of 4th District,
Boucher,	Lavigne,	Smith, of San Francisco,
Caples,	Lindow,	Stevenson,
Chapman,	Mansfield,	Stuart,
Charles,	Martin, of Alameda,	Sweasey,
Condon,	Martin, of Santa Cruz,	Swenson,
Doyle,	McConnell,	Swing,
Dudley, of San Joaquin,	McFarland,	Thompson,
Dudley, of Solano,	Miller,	Townsend,
Dunlap,	Moffat,	Tully,
Eagon,	Morse,	Turner,
Edgerton,	Murphy,	Tuttle,
Estee,	Neunaber,	Vacquerel,
Estey,	O'Donnell,	Van Dyke,
Farrell,	Ohleyer,	Van Voorhies,
Freeman,	O'Sullivan,	Walker, of Marin,
Garvey,	Porter,	Wellin,
Graves,	Pulliam,	White,
Harrison,	Reddy,	Wilson, of Tehama,
Harvey,	Reed,	Winans,
Herold,	Reynolds,	Wyatt,
Hilborn,	Rhodes,	Mr. President—75.

NOES.

Andrews,	Herrington,	McCoy,
Ayers,	Hitchcock,	McNutt,
Barry,	Holmes,	Moreland,
Barton,	Howard, of Mariposa,	Nason,
Biggs,	Huestis,	Prouty,
Blackmer,	Huestis,	Ringgold,
Brown,	Hunter,	Schomp,
Burt,	Inman,	Shoemaker,
Cross,	Johnson,	Smith, of Santa Clara,
Davis,	Jones,	Soule,
Dean,	Kelley,	Stedman,
Dowling,	Kleine,	Steele,
Evey,	Laine,	Terry,
Filcher,	Lampson,	Tinnin,
Freud,	Larkin,	Walker, of Tuolumne,
Glascock,	Larue,	Waters,
Gorman,	Lewis,	Webster,
Hager,	McCallum,	Weller,
Hall,	McComas,	West—58.
Heiskell,		

Following is the remainder as enrolled.

SEC. 10. Each House shall keep a Journal of its proceedings, and publish the same, and the yeas and nays of the members of either House, on any question, shall, at the desire of any three members present, be entered on the Journal.

SEC. 11. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 12. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 13. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. 14. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any place other than that in which they may be sitting. Nor shall the members of either House draw pay for any recess or adjournment for a longer time than three days.

SEC. 15. No law shall be passed except by bill; nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same be read on three several days in each House, unless, in case of urgency, two thirds of the House where such bill may be pending, shall, by a vote of yeas and nays, dispense with this provision. Any bill may originate in either House, but may be amended or rejected by the other; and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each House.

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the House in which it originated, which shall enter such objections upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, two thirds of the members elected to each House voting therefor, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted,) shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case, he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriation so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the House in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Chief Justice and Associate Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment, according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

SEC. 19. No Senator, or member of Assembly, shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which have been increased during such term, except such offices as may be filled by election by the people.

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; provided that officers in the militia, who receive no annual salary, local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed to hold lucrative offices.

SEC. 21. No person convicted of the embezzlement or defalcation of the public funds of the United States or of any State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State, and the Legislature shall provide, by law, for the punishment of embezzlement or defalcation as a felony.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State, as a State institution, nor shall any grant or donation of property ever be made thereto by the State; provided, that notwithstanding anything contained in this or any other section of this Constitution, the Legislature shall have the power to grant aid to institutions conducted for the support and maintenance of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances—such aid to be granted by a uniform rule, and proportioned to the number of inmates of such respective institutions; provided further, that the State shall have, at any time, the right to inquire into the management of such institutions; provided, further, that whenever any county, or city and county, or city, or town, shall provide for the support of minor orphans, or half orphans, or abandoned children, or aged persons in indigent circumstances, such county, city and county, city, or town, shall be entitled to receive the same pro rata appropriations as may be granted to such institutions under church or other control. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 23. The members of the Legislature shall receive for their services a per diem and mileage, to be fixed by law, and paid out of the public treasury; such per diem shall not exceed eight dollars, and such mileage shall not exceed ten cents per mile, and for contingent

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expenses not exceeding twenty-five dollars for each session. No increase in compensation or mileage shall take effect during the term for which the members of either House shall have been elected, and the pay of no attaché shall be increased after he is elected or appointed.

SEC. 24. Every Act shall embrace but one subject, which subject shall be expressed in its title. But if any subject shall be embraced in an Act which shall not be expressed in its title, such Act shall be void only as to so much thereof as shall not be expressed in its title. No law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be re-enacted and published at length as revised or amended; and all laws of the State of California, and all official writings, and the executive, legislative, and judicial proceedings shall be conducted, preserved, and published in no other than the English language.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal actions.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, graveyards, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or encumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual, any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—For limitation of civil or criminal actions.

Thirty-third—In all other cases where a general law can be made applicable.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market, under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 27. When a Congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a Congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more Congressmen; but the Legislature may divide any county, or city and county, into as many Congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one Congressional district, shall be formed into one or more Congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining Assembly districts, to a contiguous county or counties, and form a Congressional district. In dividing a county, or city and county, into Congressional districts no Assembly district shall be divided so as to form a part of more than one Congressional district, and every such Congressional district shall be composed of compact contiguous Assembly districts.

SEC. 28. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 29. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

SEC. 30. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article.

SEC. 31. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift, or authorize the making of any gift, of any public money or thing of value to any individual, municipal, or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to section twenty-two of this article; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 32. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered, or a contract has been entered into and performed, in whole or in part, nor to pay, or to authorize the payment of, any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 33. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by telegraph and gas corporations, and the charges by corporations or individuals for storage and wharfage in which there is a public use, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation or individual interested in the business to be regulated, and no person shall be selected who is an officer or stockholder in any such corporation.

SEC. 34. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose to be therein expressed.

SEC. 35. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the punishment of this crime. Any member of the Legislature, who shall be influenced in his vote or action upon any matter pending before the Legislature, by any reward, or promise of future reward, shall be deemed guilty of a felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office of public trust. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or with having been influenced in his vote or action, as a member of the Legislature, by reward, or promise of future reward, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

ARTICLE V.

EXECUTIVE DEPARTMENT.

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

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

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

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

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

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

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

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

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

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

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

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

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 14. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tempore of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner, as the Governor and Lieutenant-Governor, and their terms of office shall be the same as that of the Governor.

SEC. 18. The Secretary of State shall keep a correct record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, shall, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly, to be allowed only during the session of the Legislature; the Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, three thousand dollars each per annum; such compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; provided, however, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of such officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. No salary shall be authorized by law for clerical service, in any office provided for in this article, exceeding sixteen hundred dollars per annum for each clerk employed. The Legislature may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

SEC. 20. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at Chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. Any four Justices may, either before or after judgment by a department, order a case to be heard in bank. If the order be not made within the time above limited the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places at which State officers are elected; and the term of office shall be twelve years, from and after the first Monday after the first day of January next succeeding their election; provided, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, except such as arise in Justices' Courts; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also in cases of forcible entry and detainer, and in proceedings in insolvency, and in actions to prevent or abate a nuisance, and in all such probate matters as may be provided by law; also, in all criminal cases prosecuted by indictment or information in a Court of record on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all other writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, of all matters of probate, of divorce and for annulment of marriage, and of all such special cases and proceedings as are not otherwise provided for. And said Court shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. They shall be always open (legal holidays and non-judicial days excepted), and their process shall extend to all parts of the State; provided, that all actions for the recovery of the possession of, quieting the title to, or for the

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enforcement of liens upon real estate, shall be commenced in the county in which the real estate, or any part thereof affected by such action or actions, is situated. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Injunctions and writs of prohibition may be issued and served on legal holidays and non-judicial days.

SEC. 6. There shall be in each of the organized counties, or cities and counties of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; provided, that until otherwise ordered by the Legislature, only one Judge shall be elected for the Counties of Yuba and Sutter; and that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the counties of Sacramento, San Joaquin, Los Angeles, Sonoma, Santa Clara, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; provided, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court, at the same time, as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do. But a cause in the Superior Court may be tried by a Judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, approved by the Court, and sworn to try the cause.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may, at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; provided, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both Houses of the Legislature, adopted by a two-thirds vote of each House. All other judicial officers, except Justices of the Peace, may be removed by the Senate, on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, nor unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. The Legislature shall determine the number of Justices of the Peace to be elected in townships, incorporated cities and towns, or cities and counties, and shall fix, by law, the powers, duties, and responsibilities of Justices of the Peace; provided, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars, and in cases to enforce and foreclose liens on personal property when neither the amount of liens nor the value of the property amounts to three hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix, by law, the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix, by law, the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, and shall fix, by law, his duties and compensation, which compensation shall not be increased or diminished during the term for which he shall have been elected. The County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment, by the several Superior Courts, of one or more Commissioners in their respective counties, or cities and counties, with authority to perform Chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Court shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished after their election, nor during the term for which they shall have been elected. The salaries of the Justices of the Supreme Court shall be paid by the State. One half of the salary of each Superior Court Judge shall be paid by the State; the other half thereof shall be paid by the county for which he is elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. Until otherwise changed by the Legislature, the Superior Court Judges shall receive an annual salary of three thousand dollars each, payable monthly, except the Judges of the City and County of San Francisco, and the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Yuba and Sutter combined, Sacramento, Butte, Nevada, and Sonoma, which shall receive four thousand dollars each.

SEC. 18. The Justices of the Supreme Court and Judges of the Superior Courts shall be ineligible to any other office or public employment than a judicial office or employment during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary not to exceed twenty-five hundred dollars, payable monthly.

SEC. 22. No Judge of a Court of record shall practice law in any Court of this State during his continuance in office.

SEC. 23. No one shall be eligible to the office of Justice of the Supreme Court, or to the office of Judge of a Superior Court, unless he shall have been admitted to practice before the Supreme Court of the State.

SEC. 24. No Judge of a Superior Court nor of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any monthly salary unless he shall take and subscribe an affidavit, before an officer entitled to administer oaths, that no cause in his Court remains undecided that has been submitted for decision for the period of ninety days.

ARTICLE VII.

PARDONING POWER.

SECTION 1. The Governor shall have the power to grant reprieves, pardons, and commutations of sentence, after conviction, for all offenses except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, its date, the date of the pardon or reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been twice convicted of felony, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

ARTICLE VIII.

MILITIA.

SECTION 1. The Legislature shall provide, by law, for organizing and disciplining the militia, in such manner as it may deem expedient, not incompatible with the Constitution and laws of the United States. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

SEC. 2. All military organizations provided for by this Constitution, or any law of this State, and receiving State support, shall, while under arms either for ceremony or duty, carry no device, banner, or flag of any State or nation, except that of the United States or the State of California.

ARTICLE IX.

EDUCATION.

SECTION 1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement.

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SEC. 2. A Superintendent of Public Instruction shall, at each gubernatorial election after the adoption of this Constitution, be elected by the qualified electors of the State. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first Monday after the first day of January next succeeding his election.

SEC. 3. A Superintendent of Schools for each county shall be elected by the qualified electors thereof at each gubernatorial election; provided, that the Legislature may authorize two or more counties to unite and elect one Superintendent for the counties so uniting.

SEC. 4. The proceeds of all lands that have been or may be granted by the United States to this State for the support of common schools, which may be or may have been sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress, distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted, or may have been granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 5. The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year after the first year in which a school has been established.

SEC. 6. The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund and the State school tax shall be applied exclusively to the support of primary and grammar schools.

SEC. 7. The local Boards of Education, and the Boards of Supervisors, and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers, and the granting of teachers' certificates within their several jurisdictions.

SEC. 8. No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools: nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

SEC. 9. The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic Act creating the same, passed March twenty-third, eighteen hundred and sixty-eight (and the several Acts amendatory thereof), subject only to such legislative control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds. It shall be entirely independent of all political or sectarian influence, and kept free therefrom in the appointment of its Regents, and in the administration of its affairs; provided, that all the moneys derived from the sale of the public lands donated to this State by Act of Congress, approved July second, eighteen hundred and sixty-two (and the several Acts amendatory thereof), shall be invested as provided by said Acts of Congress, and the interest of said moneys shall be inviolably appropriated to the endowment, support, and maintenance of at least one College of Agriculture, where the leading objects shall be (without excluding other scientific and classical studies, and including military tactics), to teach such branches of learning as are related to scientific and practical agriculture and the mechanic arts, in accordance with the requirements and conditions of said Acts of Congress; and the Legislature shall provide that if, through neglect, misappropriation, or any other contingency, any portion of the funds so set apart shall be diminished or lost, the State shall replace such portion so lost or misappropriated, so that the principal thereof shall remain forever undiminished. No person shall be debarred admission to any of the collegiate departments of the University on account of sex.

ARTICLE X.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

SECTION 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy occurring before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the Prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty; all other officers and employés of the Prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this article.

SEC. 6. After the first day of January, eighteen hundred and eighty-two, the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation, and the Legislature shall, by law, provide for the working of convicts for the benefit of the State.

ARTICLE XI.

CITIES, COUNTIES, AND TOWNS.

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. No county seat shall be removed unless two thirds of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided. Every county which shall be enlarged or created from territory taken from any other county or counties, shall be liable for a just proportion of the existing debts and liabilities of the county or counties from which such territory shall be taken.

SEC. 4. The Legislature shall establish a system of county governments, which shall be uniform throughout the State; and, by general laws, shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein, shall be managed and transacted in the manner prescribed by such general laws.

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. It shall regulate the compensation of all such officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession.

SEC. 6. Corporations for municipal purposes shall not be created by special laws; but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, which laws may be altered, amended, or repealed. Cities and towns heretofore organized or incorporated may become organized under such general laws whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith; and cities or towns heretofore or hereafter organized, and all charters thereof framed or adopted by authority of this Constitution, shall be subject to and controlled by general laws.

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that after the first election only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for the term of two years. Any vacancy occurring in the office of Supervisor, in either Board, shall be filled by the Mayor or other chief executive officer.

SEC. 8. Any city containing a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city, at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall thereafter be submitted to the Legislature for its approval or rejection as a whole, without power of alteration or amendment, and if approved by a majority vote of the members elected to each House, it shall become the charter of such city, or if such city be consolidated with a county, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all

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special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city; all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat, and approved by the Legislature as herein provided for the approval of the charter. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

SEC. 9. The compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 10. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from its or their proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 11. Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 12. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 13. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 14. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, appoint such officers.

SEC. 15. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 16. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall, immediately, be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SEC. 17. The making of profit out of county, city, town, or other public money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 18. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for it for such year, without the assent of two thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void.

SEC. 19. No public work or improvement of any description whatsoever shall be done or made, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable, or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be affected or benefited, shall be levied, collected, and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed. In any city where there are no public works owned and controlled by the municipality, for supplying the same with water or artificial light, any individual, or any company duly incorporated for such purpose under and by authority of the laws of this State, shall, under the direction of the Superintendent of Streets, or other officer in control thereof, and under such general regulations as the municipality may prescribe for damages and indemnity for damages, have the privilege of using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight, or other illuminating light, or with fresh water for domestic and all other purposes, upon the condition that the municipal government shall have the right to regulate the charges thereof.

ARTICLE XII.

CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time or repealed.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. Each stockholder of a corporation, or joint-stock association, shall be individually and personally liable for such proportion of all its debts and liabilities contracted or incurred, during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, or association. The Directors or Trustees of corporations and joint-stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint-stock association, during the term of office of such Director or Trustee.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and be subject to be sued, in all Courts, in like cases as natural persons.

SEC. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws. No corporation, association, or individual shall issue, or put in circulation, as money, any thing but the lawful money of the United States.

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 7. The Legislature shall not extend any franchise or charter, nor remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subjecting them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the rights of individuals or the general well-being of the State.

SEC. 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock at a meeting called for that purpose, giving sixty days public notice, as may be provided by law.

SEC. 12. In all elections for Directors or Managers of corporations, every stockholder shall have the right to vote, in person or by proxy, the number of shares of stock owned by him for as many persons as there are Directors or Managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such Directors or Managers shall not be elected in any other manner, except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law.

SEC. 13. The State shall not in any manner loan its credit, nor shall it subscribe to, or be interested in, the stock of any company, association, or corporation.

SEC. 14. Every corporation other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for inspection by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

SEC. 15. No corporation, organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State.

SEC. 16. A corporation or association may be sued in the county where the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs; or in the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

SEC. 17. All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control. Any association or corporation organized for the purpose, under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right

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with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination.

SEC. 18. No President, Director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, nor in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company, except such interest in the business of transportation as lawfully flows from the ownership of stock therein.

SEC. 19. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature, or any public officer, other than Railroad Commissioner, shall work a forfeiture of his office.

SEC. 20. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying. And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such standard without the consent of the governmental authority, in which shall be vested the power to regulate fares and freights.

SEC. 21. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of the same classes of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

SEC. 22. The State shall be divided into three districts as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected by the qualified electors thereof at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years, commencing on the first Monday after the first day of January next succeeding their election. Said Commissioners shall be qualified electors of this State and of the district from which they are elected, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records and papers of all railroad and other transportation companies, and for this purpose they shall have power to issue subpœnas and all other necessary process; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes, in the same manner and to the same extent as Courts of record, and enforce their decisions and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars or be imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commission shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture of charter or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing section. The Legislature shall have power, by a two-thirds vote of all the members elected to each House, to remove any one or more of said Commissioners from office, for dereliction of duty, or corruption, or incompetency; and whenever for any cause a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

SEC. 23. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

SEC. 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

ARTICLE XIII.

REVENUE AND TAXATION.

SECTION 1. All property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership; provided, that growing crops, property used exclusively for public schools, and such as may belong to the United States, this State, or to any county or municipal corporation within this State, shall be exempt from taxation. The Legislature may provide, except in the case of credits secured by mortgage or trust deed, for a deduction from credits of debts due to bona fide residents of this State.

SEC. 2. Land, and the improvements thereon, shall be separately assessed. Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.

SEC. 3. Every tract of land containing more than six hundred and forty acres and which has been sectionized by the United States Government, shall be assessed, for the purposes of taxation, by sections or fractions of sections. The Legislature shall provide by law for the assessment, in small tracts, of all lands not sectionized by the United States Government.

SEC. 4. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi-public corporations, in case of debts so secured, the value of the property affected by such mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county, city, or district in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment a full discharge thereof; provided, that if any such security or indebtedness shall be paid by any such debtor or debtors, after assessment and before the tax levy, the amount of such levy may likewise be retained by such debtor or debtors, and shall be computed according to the tax levy for the preceding year.

SEC. 5. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 6. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 7. The Legislature shall have the power to provide by law for the payment of all taxes on real property by installments.

SEC. 8. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

SEC. 9. A State Board of Equalization, consisting of one member from each Congressional district in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, whose term of office, after those first elected, shall be four years, whose duty it shall be to equalize the valuation of the taxable property of the several counties in the State for the purposes of taxation. The Controller of State shall be ex officio a member of the Board. The Boards of Supervisors of the several counties of the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of taxation; provided, such State and County Boards of Equalization are hereby authorized and empowered, under such rules of notice as the County Boards may prescribe as to the county assessments, and under such rules of notice as the State Board may prescribe as to the action of the State Board, to increase or lower the entire assessment roll or any assessment contained therein, so as to equalize the assessment of the property contained in said assessment roll, and make the assessment conform to the true value in money of the property contained in said roll.

SEC. 10. All property, except as hereinafter in this section provided, shall be assessed in the county, city, city and county, town, township, or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county in this State, shall be assessed by the State Board of Equalization at their actual value, and the same shall be apportioned to the counties, cities and counties, cities, towns, townships, and districts, in which such railroads are located, in proportion to the number of miles of railway laid in such counties, cities and counties, cities, towns, townships, and districts.

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SEC. 11. Income taxes may be assessed to and collected from persons, corporations, joint-stock associations, or companies resident or doing business in this State, or any one or more of them, in such cases and amounts, and in such manner as shall be prescribed by law.

SEC. 12. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars on every male inhabitant of this State, over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

SEC. 13. The Legislature shall pass all laws necessary to carry out the provisions of this article.

ARTICLE XIV.

WATER AND WATER RIGHTS.

SECTION 1. The use of all water now appropriated, or that may hereafter be appropriated, for sale, rental, or distribution, is hereby declared to be a public use, and subject to the regulation and control of the State, in the manner to be prescribed by law; provided, that the rates or compensation to be collected by any person, company, or corporation in this State, for the use of water supplied to any city and county, or city or town, or the inhabitants thereof, shall be fixed, annually, by the Board of Supervisors, or city and county, or City or Town Council, or other governing body of such city and county, or city or town, by ordinance or otherwise, in the manner that other ordinances or legislative acts or resolutions are passed by such body, and shall continue in force for one year and no longer. Such ordinances or resolutions shall be passed in the month of February of each year, and take effect on the first day of July thereafter. Any Board or body failing to pass the necessary ordinances or resolutions fixing water-rates, where necessary, within such time, shall be subject to peremptory process, to compel action at the suit of any party interested, and shall be liable to such further processes and penalties as the Legislature may prescribe. Any person, company, or corporation, collecting water-rates in any city and county, or city or town in this State, otherwise than as so established, shall forfeit the franchises and waterworks of such person, company, or corporation, to the city and county, or city or town where the same are collected, for the public use.

SEC. 2. The right to collect rates or compensation for the use of water supplied to any county, city and county, or town, or the inhabitants thereof, is a franchise, and cannot be exercised except by authority of and in the manner prescribed by law.

ARTICLE XV.

HARBOR FRONTAGES, ETC.

SECTION 1. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. 2. No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof.

SEC. 3. All tide lands within two miles of any incorporated city or town in this State, and fronting on the waters of any harbor, estuary, bay, or inlet, used for the purposes of navigation, shall be withheld from grant or sale to private persons, partnerships, or corporations.

ARTICLE XVI.

STATE INDEBTEDNESS.

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

ARTICLE XVII.

LAND AND HOMESTEAD EXEMPTION.

SECTION 1. The Legislature shall protect, by law, from forced sale a certain portion of the homestead and other property of all heads of families.

SEC. 2. The holding of large tracts of land, uncultivated, and unimproved, by individuals or corporations, is against the public interest, and should be discouraged by all means not inconsistent with the rights of private property.

SEC. 3. Lands belonging to this State, which are suitable for cultivation, shall be granted only to actual settlers, and in quantities not exceeding three hundred and twenty acres to each settler, under such conditions as shall be prescribed by law.

ARTICLE XVIII.

AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if two thirds of all the members elected to each of the two Houses shall vote in favor thereof, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon, and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people in such manner, and at such time, and after such publication as may be deemed expedient. Should more amendments than one be submitted at the same election, they shall be so prepared and distinguished, by numbers or otherwise, that each can be voted on separately. If the people shall approve and ratify such amendment or amendments, or any of them, by a majority of the qualified electors voting thereon, such amendment or amendments shall become a part of this Constitution.

SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall deem it necessary to revise this Constitution, they shall recommend to the electors to vote at the next general election for or against a Convention for that purpose, and if a majority of the electors voting at such election on the proposition for a Convention shall vote in favor thereof, the Legislature shall, at its next session, provide by law for calling the same. The Convention shall consist of a number of delegates not to exceed that of both branches of the Legislature, who shall be chosen in the same manner, and have the same qualifications, as members of the Legislature. The delegates so elected shall meet within three months after their election, at such place as the Legislature may direct. At a special election to be provided for by law, the Constitution that may be agreed upon by such Convention shall be submitted to the people, for their ratification or rejection, in such manner as the Convention may determine. The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the returns so certified to him; and it shall be the duty of the Executive to declare, by his proclamation, such Constitution, as may have been ratified by a majority of all the votes cast at such special election, to be the Constitution of the State of California.

ARTICLE XIX.

CHINESE.

SECTION 1. The Legislature shall prescribe all necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and from aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; provided, that nothing contained in this section shall be construed to impair or limit the power of the Legislature to pass such police laws or other regulations as it may deem necessary.

SEC. 2. No corporation now existing or hereafter formed under the laws of this State, shall, after the adoption of this Constitution, employ, directly or indirectly, in any capacity, any Chinese or Mongolian. The Legislature shall pass such laws as may be necessary to enforce this provision.

SEC. 3. No Chinese shall be employed on any State, county, municipal, or other public work, except in punishment for crime.

SEC. 4. The presence of foreigners ineligible to become citizens of the United States is declared to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. Asiatic coolieism is a form of human slavery, and is forever prohibited in this State; and all contracts for coolie labor shall be void. All companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to such penalties as the Legislature may prescribe. The Legislature shall delegate all necessary power to the incorporated cities and towns of this State for the removal of Chinese without the limits of such cities and towns, or for their location within prescribed portions of those limits; and it shall also provide the necessary legislation to prohibit the introduction into this State of Chinese after the adoption of this Constitution. This section shall be enforced by appropriate legislation.

ARTICLE XX.

MISCELLANEOUS SUBJECTS.

SECTION 1. The city of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding, unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature, by a two-thirds vote of each House, may provide, submitting the question of change to the people.

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

SEC. 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall,

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before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

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

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

SEC. 4. All officers or Commissioners whose election or appointment is not provided for by this Constitution, and all officers or Commissioners whose offices or duties may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 5. The fiscal year shall commence on the first day of July.

SEC. 6. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 7. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 8. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, devise, or descent, shall be their separate property.

SEC. 9. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 10. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 11. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 12. Absence from this State, on business of the State or of the United States, shall not affect the question of residence of any person.

SEC. 13. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 14. The Legislature shall provide, by law, for the maintenance and efficiency of a State Board of Health.

SEC. 15. Mechanics, material-men, artisans, and laborers of every class, shall have a lien upon the property upon which they have bestowed labor or furnished material, for the value of such labor done and material furnished; and the Legislature shall provide, by law, for the speedy and efficient enforcement of such liens.

SEC. 16. When the term of any officer or commissioner is not provided for in this Constitution, the term of such officer or commissioner may be declared by law; and, if not so declared, such officer or commissioner shall hold his position as such officer or commissioner during the pleasure of the authority making the appointment; but in no case shall such term exceed four years.

SEC. 17. Eight hours shall constitute a legal day's work on all public work.

SEC. 18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

SEC. 19. Nothing in this Constitution shall prevent the Legislature from providing, by law, for the payment of the expenses of the Convention framing this Constitution, including the per diem of the Delegates for the full term thereof.

SEC. 20. Elections of the officers provided for by this Constitution, except at the election in the year eighteen hundred and seventy-nine, shall be held on the even numbered years next before the expiration of their respective terms. The terms of such officers shall commence on the first Monday after the first day of January next following their election.

ARTICLE XXI.

BOUNDARY.

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

ARTICLE XXII.

SCHEDULE.

That no inconvenience may arise from the alterations and amendments in the Constitution of this State, and to carry the same into complete effect, it is hereby ordained and declared:

SECTION 1. That all laws in force at the adoption of this Constitution, not inconsistent therewith, shall remain in full force and effect until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims, and contracts of the State, counties, individuals, or bodies corporate, not inconsistent therewith, shall continue to be as valid as if this Constitution had not been adopted. The provisions of all laws which are inconsistent with this Constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this Constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the Legislature.

SEC. 2. That all recognizances, obligations, and all other instruments, entered into or executed before the adoption of this Constitution, to this State, or to any subdivision thereof, or any municipality therein, and all fines, taxes, penalties, and forfeitures due or owing to this State, or any subdivision or municipality thereof, and all writs, prosecutions, actions, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the adoption of this Constitution. All indictments or informations which shall have been found, or may hereafter be found, for any crime or offense committed before this Constitution takes effect, may be proceeded upon as if no change had taken place, except as otherwise provided in this Constitution.

SEC. 3. All Courts now existing, save Justices' and Police Courts, are hereby abolished; and all records, books, papers, and proceedings from such Courts as are abolished by this Constitution, shall be transferred on the first day of January, eighteen hundred and eighty, to the Courts provided for in this Constitution; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

SEC. 4. The Superintendent of Printing of the State of California shall, at least thirty days before the first Wednesday in May, A. D. eighteen hundred and seventy-nine, cause to be printed at the State Printing Office, in pamphlet form, simply stitched, as many copies of this Constitution as there are registered voters in this State, and mail one copy thereof to the Post Office address of each registered voter; provided, any copies not called for ten days after reaching their delivery office, shall be subject to general distribution by the several Postmasters of the State. The Governor shall issue his proclamation, giving notice of the election for the adoption or rejection of this Constitution, at least thirty days before the said first Wednesday of May, eighteen hundred and seventy-nine, and the Boards of Supervisors of the several counties shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given at least fifteen days next before said election.

SEC. 5. The Superintendent of Printing of the State of California, shall, at least twenty days before said election, cause to be printed and delivered to the Clerk of each county in this State, five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "For the new Constitution." He shall likewise cause to be so printed and delivered to said Clerks, five times the number of properly prepared ballots for said election that there are voters in said respective counties, with the words printed thereon, "Against the new Constitution." The Secretary of State is hereby authorized and required to furnish the Superintendent of State Printing a sufficient quantity of legal ballot paper, now on hand, to carry out the provisions of this section.

SEC. 6. The Clerks of the several counties in the State shall, at least five days before said election, cause to be delivered to the Inspectors of Elections, at each election precinct or polling place in their respective counties, suitable registers, poll-books, forms of return, and an equal number of the aforesaid ballots, which number, in the aggregate, must be ten times greater than the number of voters in the said election precincts or polling places. The returns of the number of votes cast at the Presidential election in the year eighteen hundred and seventy-six shall serve as a basis of calculation for this and the preceding section; provided, that the duties in this and the preceding section imposed upon the Clerk of the respective counties shall, in the City and County of San Francisco, be performed by the Registrar of Voters for said city and county.

SEC. 7. Every citizen of the United States, entitled by law to vote for members of the Assembly in this State, shall be entitled to vote for the adoption or rejection of this Constitution.

SEC. 8. The officers of the several counties of this State, whose duty it is, under the law, to receive and canvass the returns from the several precincts of their respective counties, as well as of the City and County of San Francisco, shall meet at the usual places of meeting for such purposes, on the first Monday after said election. If, at the time of meeting, the returns from each precinct in the county in which the polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all the returns have not been received, the canvass must be postponed from time to time until all the returns are received, or until the second Monday after said election, when they shall proceed to make out returns of the votes cast for and against the new Constitution; and the proceedings of said Boards shall be the same as those prescribed for like Boards in the case of an election for Governor. Upon the completion of said canvass and returns, the said Board shall immediately certify the same, in the usual form, to the Governor of the State of California.

SEC. 9. The Governor of the State of California shall, as soon as the returns of said election shall be received by him, or within thirty days after said election, in the presence and with the assistance of the Controller, Treasurer, and Secretary of State, open and compute all the returns received of votes cast for and against the new Constitution. If, by such examination and computation, it is ascertained that a majority of the whole number of votes cast at such election is in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it shall take effect and be in force on the days hereinafter specified.

SEC. 10. In order that future elections in this State shall conform to the requirements of this Constitution, the terms of all officers elected at the first election under the same shall be, respectively, one year shorter

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than the terms as fixed by law or by this Constitution; and the successors of all such officers shall be elected at the last election before the expiration of the terms as in this section provided. The first officers chosen after the adoption of this Constitution shall be elected at the time and in the manner now provided by law. Judicial officers and the Superintendent of Public Instruction, shall be elected at the time and in the manner that State officers are elected.

SEC. 11. All laws relative to the present judicial system of the State shall be applicable to the judicial system created by this Constitution until changed by legislation.

SEC. 12. This Constitution shall take effect and be in force on and after the fourth day of July, eighteen hundred and seventy-nine, at twelve o'clock meridian, so far as the same relates to the election of all officers, the commencement of their terms of office and the meeting of the Legislature. In all other respects, and for all other purposes, this Constitution shall take effect on the first day of January, eighteen hundred and eighty, at twelve o'clock meridian.

ADOPTION OF THE CONSTITUTION.

THE PRESIDENT. The Committee on Enrollment have reported back the Constitution as correctly enrolled. According to the resolution, the question will be taken on its adoption as a whole, and upon that question the ayes and noes will be called. Those in favor of the adoption of this Constitution as a whole will answer aye as their names are called, and those opposed will answer no. The Secretary will call the roll.

The roll was called upon the adoption of the Constitution, and it was adopted by the following vote:

AYES.

Andrews,	Herrington,	Prouty,
Ayers,	Hitchcock,	Reed,
Barbour,	Holmes,	Reynolds,
Barry,	Howard, of Los Angeles,	Rhodes,
Barton,	Howard, of Mariposa,	Ringgold,
Beerstecher,	Huestis,	Rolfe,
Belcher,	Hughey,	Schell,
Bell,	Hunter,	Schomp,
Biggs,	Inman,	Shurtleff,
Blackmer,	Johnson,	Smith, of Santa Clara,
Boucher,	Jones,	Smith, of 4th District,
Brown,	Joyce,	Smith, of San Francisco,
Burt,	Kelley,	Soule,
Caples,	Kenny,	Stedman,
Chapman,	Keyes,	Steele,
Charles,	Kleine,	Stevenson,
Condon,	Lampson,	Stuart,
Cross,	Larkin,	Sweasey,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Dowling,	Lewis,	Terry,
Doyle,	Lindow,	Thompson,
Dudley, of Solano,	Mansfield,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Townsend,
Estee,	McCallum,	Tully,
Estey,	McComas,	Tuttle,
Evey,	McConnell,	Vacquerel,
Farrell,	McCoy,	Van Dyke,
Filcher,	McNutt,	Van Voorhies,
Freeman,	Mills,	Walker, of Marin,
Freud,	Moffat,	Walker, of Tuolumne,
Garvey,	Moreland,	Webster,
Glascock,	Morse,	Weller,
Gorman,	Murphy,	Wellin,
Grace,	Nason,	West,
Graves,	Nelson,	Wickes,
Harrison,	Neunaber,	White,
Harvey,	O'Donnell,	Wilson, of Tehama,
Heiskell,	Ohleyer,	Wyatt,
Herold,	O'Sullivan,	Mr. President—120.

NOES.

Dudley, of San Joaquin,	Hilborn,	Reddy,
Eagon,	Martin, of Alameda,	Shoemaker,
Edgerton,	McFarland,	Turner,
Hager,	Porter,	Waters,
Hall,	Pulliam,	Winans—15.

PAIRED—Campbell, aye, with Laine, no; Hale, aye, with Shafter, no.

THE PRESIDENT. Ayes, 120; noes, 15 [applause], and the Constitution is adopted by this Convention as the Constitution of the State of California. The next business in order is the signing. The officers will sign first.

The President then signed the Constitution, (ten o'clock and forty minutes A. M.)

The Secretary, Ed. F. Smith, also signed it, after which the following members of the Convention came forward and attached their names as the roll was called:

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

The following members were absent:

Barnes,	Cowden,	Miller,
Berry,	Crouch,	Noel,
Boggs,	Fawcett,	Overton,
Campbell,	Finney,	Wilson, of 1st District.
Casserly,	Hale,	

[NOTE—Mr. Smith, of Fourth District, being authorized by Mr. Gregg to sign his name to the instrument, was granted leave so to do.]

At twelve o'clock M. the signing was completed.

PLACING THE CONSTITUTION IN THE CUSTODY OF THE SECRETARY OF STATE.

THE PRESIDENT. The Convention will come to order. [Addressing the Secretary of State, Thomas Beck.] Mr. Secretary: The Constitutional Convention, convened here by authority of law for the purpose of framing a new Constitution for the State of California, have instructed me to place that Constitution, duly attested by its officers and signed by the members of the Convention, in your hands for the purpose of being preserved in the archives of the State. In compliance with that resolution I now place in your hands the Constitution which this Convention has framed and adopted. [Applause.]

[The Secretary of State stepped forward and received the Constitution.]

THE SECRETARY OF STATE. Mr. President: The new Constitution which you have placed in my hands I will safely deposit in the archives of the State, and I will duly transmit the same to my successor in office. [Applause.]

AN ADDRESS TO THE PEOPLE OF THE STATE.

MR. JOHNSON. Mr. President: A number of gentlemen on this floor have prepared an address to the people of this State setting forth the salient points of difference between the existing Constitution and the Constitution which we have adopted. At their request I now present it, and ask that the Secretary may read it, and I move its adoption.

MR. STUART. Mr. President: I raise the point of order that it is not an instrument emanating from any committee of this Convention, by the authority of this Convention. It is the act of a few gentlemen, and not of the Convention. Therefore I object to it.

MR. VAN DYKE. The gentleman can tell better what it is when it is read. I call for the reading of it.

[Cries of "read," "read," "read;" "question;" "no," "no," "no."]

THE PRESIDENT. The Secretary will read it.

THE SECRETARY read:

"TO THE PEOPLE OF THE STATE OF CALIFORNIA.

"As your delegates, elected to revise the present Constitution and to frame a new Constitution, it is fitting that we should state in brief the most important changes proposed, and some of the reasons therefor.

"Our present Constitution has been in force for nearly thirty years, during which time our population, wealth, and varied interests have greatly augmented. However wise and judicious when adopted, it has now become wholly inadequate to subserve the present and future necessities of the people without material modifications and restrictions. To secure an efficient and economical administration of the several departments of our government, a new Constitution is an imperative necessity.

"It is not probable that a Constitution could be framed that would be entirely satisfactory to any one man in the State. Each would find in it

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something that he would exclude, and would insert something it does not contain. Our work should however be judged as a whole, and if better than the old Constitution it should be adopted. For many years the people of this State have been oppressed by the onerous burdens laid upon them for the support of the government, and by the many acts of special legislation permitted and practiced under the present Constitution. Its provisions have been so construed by the Courts as to shift the great burden of taxation from the wealthy and non-producing class to the laborers and producers.

"The presence of large and increasing numbers of an alien and non-assimilating race in our midst which threatens, by competition, to enslave our laborers, and by contamination to degrade our civilization, renders it necessary that the whole power of the State should be exercised to protect its citizens and prevent, as far as possible, the further immigration of Chinese.

"The only restriction upon a Legislature is the Constitution of the State and of the United States. It, therefore, becomes necessary that State Constitutions should contain many regulations and restrictions, which must necessary be enlarged and extended from time to time to meet the growing demands of the sovereign people.

"DECLARATION OF RIGHTS.

"The principal changes in this article are as follows:

"In reference to the grand jury, it is provided that offenses heretofore required to be prosecuted by indictment may be prosecuted by information, after examination and commitment by a Magistrate. This change dispenses with the necessity of drawing and summoning a grand jury to act upon every case before a party accused can be put on trial, and will be a great saving of expense to the various counties of the State. But to guard against possible abuse or favoritism on the part of the prosecuting officer, and for the purpose of investigating the conduct of officials and supervising the management of county affairs, a grand jury is required to be drawn and summoned at least once a year in each county. The practice of prosecuting by information instead of by indictment has been adopted in several of the States, and found to work well."

MR. STUART. Mr. President: I rise to a point of order. [Noise, confusion, and stamping.] I don't know what time we will get through with this, and I move to lay it on the table.

MR. TULLY. I hope he will withdraw that motion and let it be read, and it will be voted down in time.

The Secretary proceeded with the reading amid great confusion.

"In respect to the trial jury, it is provided that in civil actions three fourths of the jury may render a verdict. This change from the old common law practice has also been tried elsewhere with satisfactory results.

"In criminal cases not amounting to felony a jury may be waived, and in like cases, as well as in civil actions, the jury may consist of a less number than twelve if the parties so agree.

"The only change made in the section relating to freedom of speech and the press, is that in prosecutions for libel for publication in a newspaper, the trial is required to be had in the county where the paper has its publication office, or where the party alleged to be libeled at the time resided, subject to be changed for cause.

"The provision limiting the exercise of the right of eminent domain has been amended so as the better to protect the rights of the citizen in the possession and enjoyment of his property. A new section has been added, declaring against monopolies, to the effect that no special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

"RIGHTS OF SUFFRAGE.

"It is provided that no native of China shall enjoy the elective franchise in this State. This amendment is intended to guard against a possible change in the naturalization laws so as to admit Chinese to citizenship, and it was necessary to exclude all natives of China in order to avoid the prohibition contained in the fifteenth amendment to the Constitution of the United States against abridging the right of citizens of the United States to vote on account of race or color. This completely closes the door against Chinese ever becoming entitled to vote in this State.

"LEGISLATIVE DEPARTMENT.

"The changes under this head are important. While securing equal if not greater efficiency in this department of the Government, the amendments proposed will do much towards purifying the public service, and will reduce the expenses of the State from fifty to one hundred thousand dollars annually. It is provided for the meeting of the Legislature on the first Monday after the first day of January, thus doing away with the holiday recess.

"The power of the Legislature has been restricted in every case where it would be safe to do so, in respect to the enacting of local or special laws. In view of these changes, and of the further fact that the Legislature heretofore have spent more than half their time in recesses and on local measures, we have shortened the regular sessions to sixty days. To prevent the heretofore dangerous practice of rushing through bad bills during the last hours of the session, and in the midst of excitement, it is provided that no bill shall be introduced during the last ten days of the session without the consent of two thirds of the members. The qualifications of members of either house are three years' residence of the State and one year of the district represented. In apportioning population for representation, Chinese are excluded. The pay of members is not to exceed eight dollars a day; the mileage, ten cents per mile, and the contingent expenses not exceeding twenty-five dollars. No pay is allowed to members during a recess or adjournment for more than three days. It is further provided that no bill shall become a law until printed and read at length on three several days, and shall have received a majority on an aye and no vote of all the members elected to each house. The Governor is given ten days after the adjournment of the Legislature to consider and sign or reject bills, and is also given power to veto any item of any appropriation bill without invalidating the whole bill. This is a provision of incalculable importance. The power of the Legislature to appropriate money for any purpose besides the support of the State government, and institutions exclusively under the control of the State, is prohibited, except in the case of certain worthy charities.

"Sales of shares of the capital stock of any corporation on margin are declared void, and the Legislature is directed to regulate or prohibit stock gambling. The Legislature is prohibited from giving or lending the credit of the State, or of any county, city, or other political subdivision of the State; also, from making or authorizing the making of any gift, grant, or subsidy to any person, corporation, or association. Lobbying, or the acceptance of a reward when in the service of the public, is declared a felony. No person is eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years. When convened in extra session the Legislature is limited to the legislation specified in the proclamation convening it.

"The Lieutenant-Governor is disqualified from holding any office except as specially provided during his term.

"The salaries of the State officers are considerably reduced. For the first two terms the salary of the Governor is six thousand dollars per annum; that of the Lieutenant-Governor the same per diem as is received by the Speaker of the Assembly, to be allowed only during the session of the Legislature; and that of each of the other State officers three thousand dollars per annum, in full for all services. And it is provided that they shall not receive any other fees or perquisites for the performance of any official duty. After the first two terms the Legislature may reduce, but cannot increase, the above named compensation.

"No Clerk in any office shall receive a salary exceeding sixteen hundred dollars per annum.

"The Legislature may, in its discretion, abolish the office of Surveyor-General. The Governor shall not, during his term of office, be elected a Senator to the Senate of the United States. No convict who has been twice convicted of a felony shall be pardoned, unless upon the written recommendation of a majority of the Judges of the Supreme Court.

"JUDICIAL DEPARTMENT.

"The Supreme Court consists of a Chief Justice and six Associate Justices, elected for twelve years. The Court may sit in departments as well as in bank, and shall be always open for the transaction of business. The plan of permitting the Court to sit in departments is new, and is intended to augment the working capacity of the Court. The increasing business devolved upon our Court of last resort renders it necessary to provide some relief; and the system proposed was adopted instead of creating intermediate Appellate Courts, as being more economical and better adapted to the speedy determination of causes, as well as giving more time for the thorough consideration of the same. The jurisdiction of the Supreme Court thus constituted is substantially the same as in the old Constitution; but all decisions are required to be in writing, and the reasons therefor to be stated.

"The Superior Court takes the place of the District, County, and Probate Court, and the Criminal Courts in the City and County of San Francisco, except the Police Courts; and its jurisdiction includes substantially the same as all other Courts thus superseded.

"The number of Judges to each Superior Court, in the larger counties and in the City and County of San Francisco, is proportional to the amount of judicial business to be transacted, with power given to the Legislature to increase or diminish this number as circumstances may require. Wherever there is more than one Judge to a Court in a county, the coördinate power given to the Judges will enable the same number to dispatch more business than under the present system, where each Judge is confined to his own Court.

"The salary of the Superior Court Judges is paid, one half by the State and one half by their respective counties. Inasmuch as these Judges take the place of the District Courts, which are State Courts, and the County Courts, and which are now paid by the State and counties respectively, the expense of the new system to the State and counties will aggregate about the same as the one superseded, but much greater judicial force and facility for the dispatch of business is secured. It will also give to each county a Court of general jurisdiction, open at all times for the transaction of business, thereby, as it were, without delay, bringing justice home to every man's door.

"In order to remedy a growing evil in the delay of Courts in deciding causes, it is provided that, before drawing their salary, the Justices of the Supreme Court and Judges of the Superior Courts shall be required to severally file an affidavit that no case remains undecided in their Courts which has been submitted for ninety days.

"EDUCATION.

"The changes in this article are not numerous, but they are important. It is provided that two or more counties may, by authority of the Legislature, unite and form one district, and elect one Superintendent of Schools for such district. It is made mandatory upon the Legislature to provide for a system of free schools, which must be maintained for at least six months in each year.

"The public school system is, for the first time, clearly defined so as to include all public schools, thus bringing them entirely under the control of the school authorities; and it is provided that the entire fund furnished by the State shall be used exclusively for the support of primary and grammar schools. The text-book question has been taken from the Legislature and placed under the control of local authorities. The examination of teachers and the granting of certificates has been

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placed under the same control. The appropriation of public money for the support of any sectarian or denominational school, or for the support of any school not under the exclusive control of public school officers, has been prohibited. The University is, as far as possible, removed from the influence of politics, but it is made the duty of the Legislature to enforce compliance with the terms of its endowment, while the entire revenue of the Agricultural College grant is to be used exclusively for the support of at least one College of Agriculture and the Mechanic Arts. The responsibility of the State in regard to that fund is clearly recognized in the Constitution. No person can hereafter be refused admission to any of its collegiate departments on account of sex.

"STATE INSTITUTIONS.

"It is provided for the appointment of five Prison Directors, to hold office for ten years without compensation, except necessary expenses while in the discharge of official duty. They have charge and superintendence of the State Prisons, and appoint the executive officer and Clerk of the same. It has been shown that in reference to our Insane Asylums, the management of which has generally been unexceptionable, a good class of men can be secured to fill the office of Directors without salary. It is believed that this change will remove the management of our State Prisons from the domain of party politics. After January first, eighteen hundred and eighty-two, the letting out of convicts, under contract, is to cease, and they are to be worked for the benefit of the State.

"CITY, COUNTY, AND TOWNSHIP ORGANIZATION.

"In this article a new system of local self-government has been established. It provides that county seats shall not be removed unless two thirds of the electors voting on the proposition shall vote in favor of such removal. A county cannot be reduced in population to less than eight thousand by the formation of a new county. A new county cannot be formed containing a population less than five thousand. The Legislature is directed to establish a system of county governments, which shall be uniform throughout the State, and by general laws to provide for township organization. Cities and towns may become incorporated under general laws, wherever a majority of the electors voting at a general election may so determine. City and county government may be consolidated into one municipal government. Any city of one hundred thousand inhabitants may form a charter for its own government consistent with and subject to the Constitution and laws of the State; but such charter, when ratified by the people, must be submitted to the Legislature for approval, and may be amended at intervals of not less than two years. Any county, city, town, or township may make and enforce within its limits all necessary police, sanitary, and other regulations not in conflict with general laws. The making of profit out of county, city, or town, or other public moneys, or using the same for any purpose not authorized by law, is declared to be a felony. Counties, cities, towns, townships, Boards of Education, and school districts are prohibited from incurring any indebtedness or liability for any purpose exceeding, in any one year, the revenues provided for them respectively, for such year, without the assent of two thirds of the voters thereof, voting at an election held for that purpose.

"CORPORATIONS OTHER THAN MUNICIPAL.

"Under this head many restrictions demanded by the advancing ideas of the times have been provided for. The provisions of the existing Constitution respecting banks and banking have been retained, excepting the constantly violated restriction of such institutions to the deposit of gold and silver, and they are forbidden to issue paper to circulate as money. For the better protection of creditors and stockholders of corporations and joint-stock associations the Directors and Trustees are made liable for the embezzlement and misappropriation of funds by the officers. It provides for annulling all unused charters, claims of franchises, and special privileges.

"The Legislature has been prohibited from extending charters, or remitting forfeitures; and from authorizing any collusive alienation or leasing of franchises or property of corporations. The right of eminent domain, as to the franchises and property of all corporations, has been preserved. They have been prohibited from engaging in business, other than authorized in their charter; from holding real estate, other than that required for their business, longer than five years, and from making fictitious increase of their capital stock. The right of representation to all shareholders has been secured, and the formation of coöperative societies for agricultural, mechanical, and manufacturing purposes has been authorized. Provisions to secure the better management of corporations in this State have been made, and many other checks and guarantees have been provided for, which cannot, for want of space, be more fully specified here, and to which we invite the attention of the voter.

"The subject of railroad and other transportation companies has become of overshadowing importance. The Convention adopted the provisions to be found in a majority of modern Constitutions, declaring railroad and other transportation companies common carriers and subject to legislative control; granting the right to intersect and connect, and requiring the receipt and transport of passengers and freight without delay or discrimination; forbidding contracts between the companies and their officers; forbidding pooling, or combinations of earnings, for the purpose of monopoly; preventing the increase of railroad rates that have been reduced for purposes of competition, and prohibiting discriminations in charges or facilities for transportation. The right of the State to control the operations of railroad and other transportation companies, and to establish and regulate their rates of charges, have been established by the highest judicial authority. It is necessary to determine how that right shall be exercised to secure the best interest of all concerned. Convinced by the uniform experience of older communities that satisfactory regulation cannot be accomplished by the Legislature through general laws, a Constitutional Commission is proposed, composed of three, to be elected in districts, with power to regulate and establish rates, and to supervise the operation of railroad and other transportation companies of the State.

"The incidental powers necessary to make this power effectual, such as the authority to examine books, take testimony, issue subpœnas, and other process, hear and determine complaints, apply to the Courts for the enforcement of their decisions, and the correction of abuses, etc., are also conferred, and the Legislature is authorized to supply omissions. The right of action of any individual is not affected. For incompetency or malfeasance, the Legislature is authorized to remove any Commissioner by a two-thirds vote. This plan is submitted with confidence in its efficiency.

"REVENUE AND TAXATION.

"In the existing Constitution there is no definition of property. In the new Constitution property is defined. It includes moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed.

"This definition is comprehensive, and includes every species of property. All property is to be taxed according to its value.

"The effect of this provision will be very important, as it will bring upon the assessment roll an immense amount of property in the hands of the wealthy which now escapes taxation under the decision of the Supreme Court. The only property exempted from taxation is growing crops, public property, and property exempt under the laws of the United States.

"The taxation of mortgages is provided for in this way, viz.: The owner of the land is to pay the tax on its value, deducting the value of the mortgage. The owner of the mortgage is to pay the tax on the value of his mortgage. This is on the principle that a man shall pay taxes on what he is worth, and on the same principle, if there is no mortgage but simply a note or credit, the Legislature is authorized to permit the holder to deduct his debts if they are due to residents of this State. This deduction can be made from unsecured credits only.

"If any contract is made by which a debtor is to pay the tax on any money loaned, the contract is void as to the interest to be paid, and also as to the tax.

"Another very important provision is that land and the improvements shall be separately assessed, and cultivated and uncultivated land, of the same quality and similarly situated, shall be assessed at the same value. The effect of this provision will be that extensive landed proprietors, unless they choose to pay the increased tax, will have to cultivate their lands or dispose of them to some one who will.

"Another important provision is that the Legislature shall require each taxpayer, annually, to deliver a statement, under oath, to the County Assessor, of all the property owned by him on the first Monday of March. This will prevent the fraudulent transfer of property in order to escape taxation.

"The Legislature is empowered to establish an income tax. But this is only permissive, and is intended to reach incomes derived from property not otherwise reached by taxation, such as foreign corporations, gas companies, and the like. The Legislature is required to pass all laws necessary to carry out the different provisions, and is empowered also to provide for the payment of taxes on real property by installments. State and County Boards of Equalization have been created, in order to equalize the assessment of property between the counties and individuals.

"WATER AND WATER RIGHTS.

"The peculiarities of our climate, its extreme wet and dry seasons, the extensive influence of water on mining, agriculture, manufactures, and domestic uses, thereby controlling nearly every avenue to wealth, and the additional fact of the control of nearly all the available water of the State by individuals and corporations, necessitated the adoption of stringent provisions for the use and control of water. So far as the public has an interest in such use, it is provided that when water is offered for sale or hire to the public, it shall become a public use and be regulated by general laws. In cities and towns it is compulsory on the Boards of Supervisors, or other governing bodies, to fix, annually, the price for which water shall be sold to the cities or towns and the inhabitants thereof, and enforce such regulations by suitable penalties.

"HARBORS, TIDE-WATER, AND NAVIGABLE STREAMS.

"Many of the landings and wharves being now monopolized by a few persons, under private ownership, and a disposition being manifest on the part of the owners to practice extortion upon the public, it is provided that no individual or corporation shall deny the public a right of way over their wharves and landings; and that the Legislature shall enact such laws as will give a liberal construction in favor of the public. It is also provided that tide lands, fronting on navigable waters, be withheld from grant or sale.

"FUTURE AMENDMENTS.

"Under the existing Constitution, a proposed amendment must pass the Legislature at two sessions before being submitted to the people. It is provided that amendments passed by a two-thirds vote of both branches of the Legislature shall be submitted at the next general election; and if two or more are submitted at the same time they shall be voted on separately.

"A Convention called to revise the Constitution may submit its work to the people in such manner as the Convention may determine, thus giving it power to submit articles separately if desirable.

"CHINESE.

"The subject-matter of this article is entirely new, and its appearance in the proposed Constitution arises from the peculiarity of our situation.

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The article authorizes the use of the whole police power of the State to abate what no argument is necessary to prove is a nuisance—that is, the presence and influx of the Chinese. Their presence is declared to be dangerous, and the Legislature is directed to discourage their immigration by all the means within its power; to pass laws to prohibit their introduction into the State, and to delegate all necessary power to incorporated cities and towns to remove them without their limits. Their employment on public works is prohibited and all corporations are forbidden to employ them. These provisions are rendered the more necessary in view of the fact that the Federal Government has refused to grant us any relief from this overshadowing evil.

"MISCELLANEOUS SUBJECTS.

"Under this head the following provisions, among others, are made in the new Constitution:

"The capital is to remain at the City of Sacramento until changed by a majority vote of the people, under such rules and regulations as the Legislature, by a two-thirds vote of each House, may provide.

"Every person is disqualified from holding any office of profit or trust who shall be convicted of having given or offered any bribe to procure his election or appointment. Laws must also be passed prohibiting persons convicted of bribery, perjury, forgery, malfeasance in office, or other high crime, from the right of suffrage, serving on juries, or holding any office. Mechanics, artisans, laborers, and material-men shall have a lien for the value of their labor or material upon the property upon which they have bestowed their labor, or for which they have furnished material.

"The elections have been transferred from the odd to the even numbered years, and judicial officers are to be elected at the same time other officers are elected. Where, within four years, we have heretofore held from four to six elections—counting State, judicial, county, and congressional—it is now proposed to have but two.

"The State officers are to be elected on the even numbered years between the Presidential elections, so that State politics will not be mixed up or overshadowed by national. The expense of elections will thereby be very greatly reduced.

"CONCLUSION.

"In conclusion, we submit the result of our labor to you for your approval or rejection. Considering the climate, situation, and extent of our State, and the many, varied, and almost irreconcilable interests of our people, our task has not been an easy one. We have endeavored to remain faithful to our trust—to uphold the rights of the people at all times, feeling that of them we were a part, to them we were responsible, and that they must finally pass upon the conclusions reached by us.

"It remains with you to determine whether you shall continue under the old régime or approve the organic law we herewith submit to you.

"SACRAMENTO, March 3, 1879."

MR. GRACE. Believing that it is hurtful to talk, and as we have talked a good deal, I now move the previous question.

[Great confusion.]

MR. STUART. I move to adjourn sine die.

MR. PULLIAM. I move that the document be referred back to the gentleman who presented it.

THE PRESIDENT. Gentlemen will take their seats and come to order.

MR. VACQUEREL. I rise to a point of order.

THE PRESIDENT. The gentleman demands the previous question.

MR. VACQUEREL. My point of order is, that there has been no committee appointed to draft an address.

MR. WINANS. We have not even heard it read; we could only hear part of it.

THE PRESIDENT. The gentlemen seconding the previous question will rise.

Seconded by Messrs. Stedman, West, Howard of Los Angeles, and Wyatt.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the motion to adopt this address as the action of this Convention.

MR. SHAFTER. Ayes and noes.

MR. WINANS. Ayes and noes.

MR. LAMPSON. Ayes and noes.

MR. TULLY. Ayes and noes.

MR. STEDMAN. Ayes and noes.

MR. REDDY. I rise to a point of order. I do not think the Act calling this Convention authorizes this Convention to publish any address at all; and after that, that they are not authorized to publish it at the expense of the State.

THE PRESIDENT. There is no such question before the Convention.

[Cries of question! Question! Question!]

THE PRESIDENT. The Secretary will call the roll.

MR. WATERS [After the roll call had been commenced]. Mr. President, Mr. President, Mr. President.

THE PRESIDENT [Rapping vigorously]. The gentleman will come to order.

MR. RINGGOLD. I desire to know whether the previous question is up, or the adoption of the address?

The roll was called, and the address was adopted by the following vote:

AYES.

Andrews,	Barton,	Blackmer,
Ayers,	Beerstecher,	Boucher,
Barbour,	Bell,	Brown,
Barry,	Biggs,	Burt,
Caples,	Hughey,	Reynolds,
Charles,	Hunter,	Rhodes,
Condon,	Inman,	Ringgold,
Cross,	Johnson,	Rolfe,
Davis,	Joyce,	Schomp,
Dean,	Kelley,	Shurtleff,
Dowling,	Kenny,	Smith, of Santa Clara,
Doyle,	Keyes,	Smith, of 4th District,
Dunlap,	Kleine,	Smith, of San Francisco,
Estee,	Lampson,	Stedman,
Estey,	Larkin,	Steele,
Evey,	Larue,	Stevenson,
Farrell,	Lavigne,	Sweasey,
Filcher,	Lewis,	Swenson,
Freeman,	Lindow,	Swing,
Freud,	McCallum,	Terry,
Glascock,	McComas,	Thompson,
Gorman,	McConnell,	Tinnin,
Grace,	McCoy,	Tully,
Hager,	Mills,	Tuttle,
Hale,	Moffat,	Van Dyke,
Harrison,	Moreland,	Walker, of Marin,
Harvey,	Morse,	Webster,
Heiskell,	Nason,	Weller,
Herold,	Nelson,	Wellin,
Herrington,	Neunaber,	West,
Hitchcock,	O'Donnell,	White,
Holmes,	Ohleyer,	Wickes,
Howard, of Los Angeles,	O'Sullivan,	Wilson, of Tehama,
Howard, of Mariposa,	Prouty,	Wyatt—103.
Huestis,		

NOES.

Belcher,	Mansfield,	Shoemaker,
Chapman,	Martin, of Santa Cruz,	Stuart,
Dudley, of San Joaquin,	McFarland,	Townsend,
Dudley, of Solano,	McNutt,	Turner,
Eagon,	Murphy,	Vacquerel,
Edgerton,	Pulliam,	Van Voorhies,
Garvey,	Reddy,	Walker, of Tuolumne,
Hall,	Reed,	Waters,
Hilborn,	Schell,	Winans,
Laine,	Shafter,	Mr. President—30.

[Applause.]

A PROTEST.

MR. SHAFTER. I believe the rule allows a member to protest against any vote. I protest against the document as being untrue in point of fact in its statements, and as being out of order after the work for which the Convention was called had been disposed of. I therefore enter my solemn protest against it.

RESOLUTIONS.

MR. SHAFTER. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the thanks of this Convention be presented to the Honorable Joseph P. Hoge, for the able and impartial manner in which he has performed the duties of presiding officer of this Convention, and that following the dissolution of this Convention Colonel Hoge will be accompanied by its sincere wishes for his future health, happiness, and prosperity.

MR. SHAFTER. We have been here one hundred and fifty-seven days altogether. I am sure that members will carry away with them nothing but pleasant recollections of his associations here, and a consciousness of having discharged their duties faithfully, each according to his own conscience. I am sure that I express the common voice when I say that you, Mr. President, will carry with you, not only the respect, but the best wishes of the members for your happiness, health, and prosperity. [Applause.]

THE SECRETARY. Gentlemen: The question is upon the adoption of the resolution.

Adopted unanimously.

MR. AYERS. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the thanks of this Convention are hereby tendered to Mr. Frank P. Thompson, Superintendent of State Printing, for the prompt, efficient, and thorough manner in which the work in his department for this Convention has been done.

Adopted unanimously.

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

THE SECRETARY read:

Resolved, That the Superintendent of the State Printing Office is hereby authorized to print nine hundred and sixty copies of the Constitution, as correctly enrolled, for the use of delegates.

Adopted.

MR. VAN DYKE. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the Address which has been adopted be published with the proposed Constitution.

MR. WATERS. Mr. President: I should have voted for this address, had it not been for one error which I have noticed. It states that the use of water is made a public use in those instances in which the public have an interest in it. That very proposition was flatly voted down twice by this Convention.

MR. VACQUEREL. I move an amendment: that the names of those who voted for and against it be inserted.

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THE PREVIOUS QUESTION.

MR. STEDMAN. I move the previous question.

Seconded by Messrs. Wyatt, Gorman, Wickes, and Heustis.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The question is upon the adoption of the Constitution.

Adopted.

PRESENTATION TO THE PRESIDENT.

MR. JOHNSON. Mr. President: I am commissioned by my *fraters*, on the floor of this Convention, to rise to a question of privilege. It is a matter, sir, which concerns vitally the feelings of this body, and as they believe, and so I believe, yourself as the President. In its retrospect it dates back to the organization of this Convention. In its prospect it reaches forward to the approaching close of our labors, when we shall bid a long adieu to this hall and return to our respective homes. Five months and more have passed away since we came to these halls comparative strangers. Here was the young man, just from college, crowned with the fragrant benedictions of Alma Mater; the matured lawyer, the victor of many forensic triumphs, fresh from his briefs; the old statesman, still well preserved and displaying all the fire, vivacity, and intellectual acumen, of which we have heard our seniors speak aforetimes. There were others representing other professions, other pursuits, and the dignity of labor.

In that motley group there came also one, the observed of all observers, "frisking beneath the burdens of three-score," and in his hands we placed the gavel of command. To govern such a heterogeneous body, to assuage their turbulence, to direct aright their efforts and aspirations, required a man of clear head, great intellect, and moral resources, a strong will, and I might add, an unimpaired physical constitution. We have found you, sir, equal to the emergency. During the prevalence of the stormy debate, you have preserved your own equanimity of mind and of temper. However complicated the questions which have arisen, your thorough knowledge of parliamentary law, and your long experience in presiding over deliberative bodies, have served you as the thread of Ariadne served Theseus, as a means of escape from the labyrinth. Your conservative demeanor, and gentle courtesies have also inspired us with the most friendly sentiments. Let these mute but learned witnesses by my side, attest the genuineness of this expression. Here is Dickens with his touching pathos and effervescing humor, as he tells of some new variety which he has just discovered in the genus homo. It may be some quaint original like "Little Paul Dombey," some quainter still like, "Jack Bunsby," or "Captain Cuttle," or some immaculate conception like "Agnes." Here is Motley, who discourses learnedly about a half submerged country where William the Silent laid the foundation of a great State. Here is our own Irving, never so entertaining, as when, with face all aglow, he talks about the legends of Sleepy Hollow, and the weird country of the Catskills. Here is De Quincy, the learned opium eater, who can discount the heathen Chinese himself in opium eating, or at least, he can describe its effects in words of more thundering sound; and here is that brilliant essayist, Montaigne, who has laid all history and personal observations under contribution to "point a moral or to adorn a tale." Here is Macaulay, who deems it not beneath the dignity of his pen to portray the changing manners and customs of a great people, in his history of England; and finally here, in order, Sheridan, whose oration on the charge against Hastings, extracted from Fox that famous eulogy, "All that I have ever heard, all that I have ever read, when compared with it, dwindled into nothing and vanished like vapor before the sun."

These learned witnesses, Mr. President, be pleased to take home with you, and knowing your eminently social turn of mind, we have no doubt you will give them a warm reception, and ensconce them in your best apartments. The shapes they assume are somewhat Protean, being an even hundred in number. So many guests at one time would ordinarily occasion some disarrangement of a household; but your record for hospitality we have never heard questioned. Laying aside all facetiousness, Mr. President, I will make my meaning more apparent, which is, that your friends in this Convention have requested me to present you, in their name and for them, one hundred volumes of standard literary works as a slight testimonial of their respect and regard. The arch to Titus, the column to Trojan; but the works of Dickens, and Motley, and Irving, and DeQuincy, and Montaigne, and Macaulay, and Sheridan, to Mr. President. [Applause.]

We came together, many of us at least, as I said before, as strangers; I might have added, with preconceived antagonistic notions. After the constant attrition to which our views have been subjected for the last five months, I doubt not here at this late day we entertain more respect for one another, and have abated some of the overweening confidence which we had in our formulas, and in our own peculiar opinions, as constituting the only safety of the State.

The State! what shall I say of her—this beautiful land of the Occident? Long after we shall have passed away, and nothing shall remain of us but

> The broken arch, the ruined wall,
> The chambers desolate, the portals foul,

May our goodly mother, the State, survive and flourish. [Applause.] Her fresh young face was beautiful three hundred years ago, when the white sails of Drake fluttered in San Francisco Bay; still later, it retained its beauty during the gentle sway of the Mission Fathers, with their depasturing flocks; despite the Mongolian blotch it is beautiful now, with the changing colors of the orange, the olive, the grape, the waving cereals, and with the cultivated look of her proud metropolis. But it will be more beautiful when, by the adoption of the new Constitution and its practical workings, labor shall be requited for all its pains, and from her otherwise fair features shall gradually disappear the Mongolian blotch. Then, and only then, will her beautiful face become the mirror, as it were, of a free, happy, homogeneous, and assimilating people.

But the shadows are lengthening. The gavel will soon be unheeded; the hand which now holds it will soon hold it no more; and after the uttering of a word my mission will have been accomplished. That word has been said time and again, by all classes and conditions of society. It was whispered it may be many years ago by some one on this floor, into the ear of some gentler being, some fond parent, some trusted monitor, the bulwark of his youth. It is a word which will be uttered by us many times to come, to wife, to child, father, mother, friend, but always in sorrow; a word which dissolving nature, before it breathes its last, will rally all of its energies to articulate; but all must say it, and all must feel it. That word is: Farewell!

> For who, to dumb forgetfulness a prey,
> This pleasing anxious being e'er resigned;
> Left the warm precincts of the cheerful day,
> Nor cast one longing, lingering look behind?

Mr. President, I have nothing farther to say on this question of privilege. "Finis" is written on the parchment roll which contains the new Constitution; that word which has been said so often and by so many in this changing kaleidoscopic life of ours; that word which is destined to intensify the bitter sorrow of so many hearts in time to come, whether they beat in the breasts of prince or peasant, the learned or the unlearned, must now be said by the Delegates of this Convention. My *fraters* say, I say, we all say, FAREWELL TO MR. PRESIDENT. [Applause.]

PRESIDENT HOGE. Mr. Chairman: I return to you, and the gentlemen you represent, my most grateful thanks for the kind and flattering terms in which you have caused this gift to be presented to me. It overpowers me. Mr. Chairman, I hope you will believe me when I say I am essentially a modest man. [Laughter.] The terms in which you have presented this very elegant, and to me, most appropriate gift, almost destroys the power of reply. I have endeavored, in the position in which this Convention in its kindness placed me, to perform its duties faithfully, impartially, and with the honest purpose of advancing the deliberations of this body and conducting them to a successful termination. If, therefore, in the exercise of those duties, I have succeeded in winning your appropriation, I am well rewarded. I shall treasure this beautiful gift for all time. Every time I look into its pages it will bring back pleasant memories of hours that we spent together here; and when I am gone they will be handed down to my children, to remind them, in after years, that their father had merited your kind consideration and approbation. Gentlemen, we are now about to part, many of us, perhaps, to meet no more; I beg, therefore, that you will hold me in kind remembrance, and I assure you that I shall hold you all in pleasant memory. I wish you a happy return to your homes and a prosperous future. [Continued applause.]

MORE RESOLUTIONS.

Resolved, That the thanks of this Convention is hereby tendered to its several Secretaries and Journal Clerks for the efficient and faithful manner in which they have discharged their several duties.

Adopted unanimously.

ANOTHER PRESENTATION.

MR. ESTEE. Mr. President: [To the Sergeant-at-Arms.] I am commissioned by the members of this Convention to present you, as the Sergeant-at-Arms, with a slight token of our esteem. I am instructed to present you with this watch and chain, and I wish to remind you that it is not presented to you so much for its real value, as that you may, through life, bear with you a reminder that this Convention believed that you had faithfully performed your duty. [Applause].

MR. SHERWOOD. Mr. President, and Gentlemen of the Convention: I accept this gift with heartfelt thanks to all the donors who participated in it, and at the same time return to each and every member, and to each employé of the Convention, my thanks for their uniform kindness throughout this tedious session. I have endeavored to do my duty in the position to which you elected me to the best of my ability, and this beautiful token reminds me that my efforts have not been in vain. I have only to say, farther, that I hope your earnest efforts here will be duly appreciated by the people of this State, and that the Constitution which you have framed will be adopted as the fundamental law. [Applause].

MORE RESOLUTIONS.

MR. FILCHER. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the thanks of this Convention be and are hereby extended to the State officers, one and all, for their promptness in responding to the demands of this body, and the uniform courtesy they have extended toward members.

Adopted.

MR. SCHELL. Mr. President: I offer a resolution.

THE SECRETARY read:

Resolved, That the thanks of this Convention are hereby tendered to Benjamin Chambers, the Assistant Sergeant-at-Arms, for the polite and efficient manner in which he has discharged the duties of his office.

Adopted.

MR. MURPHY. I move to adjourn sine die.

MR. HUESTIS. Wait a minute, I have a resolution.

THE SECRETARY read:

Resolved, That the thanks of this Convention be and are hereby tendered to the several members of the Committee on Revision and Adjustment for the prompt and faithful manner in which they have performed the arduous duties incumbent upon them as members of such committee.

Adopted.

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MR. LARUE. I move that the thanks of this Convention be returned to the Pages and Porters of this Convention.

Adopted.

MR. MURPHY. I would like to have thanks returned to everybody and everything—except President Hayes. [Laughter.]

MR. WINANS. Mr. President: I am requested by the Porters of this Convention to present to you this beautiful golden gavel as a token of their esteem.

MR. VAN VOORHIES. I move that the thanks of this Convention be returned to the "silent members."

THE PRESIDENT. The resolution is unanimously adopted. [Laughter.]

ADJOURNMENT SINE DIE.

THE PRESIDENT. Gentlemen: I am now about to perform the last official act of my position, and before doing so I wish to express my thanks for the confidence which you have reposed in me, and for the manner in which you have assisted me in performing its arduous duties. I can say to you, because you have said it, that I have endeavored to perform the duties impartially, with the sole view of aiding you in your deliberations, and bringing them to a happy termination. I will leave these halls without a single unkind feeling towards any member of this body. The duties assigned to you by the people of this State, were certainly of the greatest importance, more so, perhaps, than any which devolve upon the citizen—the framing of a new Constitution for the government of a great State, perhaps for a long term of years. That you have performed your duties most faithfully, most honestly, I can bear testimony. [Applause.] Whatever else may be said, the truth of that assertion cannot be denied. You have done your work, and it remains now to be submitted to the people, and whatever may be the result—if it be the judgment that your work is good, or that it is ill, we must be satisfied. Gentlemen, my last duty now is to declare this Constitutional Convention adjourned sine die. [Applause.]

At one o'clock and fifteen minutes P. M. the Convention stood adjourned sine die.

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